

SECOND REGULAR SESSION

SENATE BILL NO. 953

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS ENGLER, KLINDT AND MAYER.

Read 1st time January 25, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4184S.03I

AN ACT

To repeal sections 374.046, 381.003, 381.009, 381.011, 381.015, 381.018, 381.021, 381.022, 381.025, 381.028, 381.031, 381.032, 381.035, 381.038, 381.041, 381.042, 381.045, 381.048, 381.051, 381.052, 381.055, 381.058, 381.061, 381.062, 381.065, 381.068, 381.071, 381.072, 381.075, 381.078, 381.081, 381.085, 381.088, 381.091, 381.092, 381.095, 381.098, 381.101, 381.102, 381.105, 381.108, 381.111, 381.112, 381.115, 381.118, 381.121, 381.122, 381.125, 381.131, 381.141, 381.151, 381.161, 381.171, 381.181, 381.191, 381.201, 381.211, 381.221, 381.231, and 381.241, RSMo, and section 381.410 as enacted by conference committee substitute for senate bill no. 664, eighty-eighth general assembly, second regular session, and section 381.412 as enacted by house committee substitute for senate bill no. 148, eighty-ninth general assembly, first regular session, and sections 381.410 and 381.412 as enacted by conference committee substitute for house substitute for house committee substitute for senate committee substitute for senate bill no. 894, ninetieth general assembly, second regular session, and to enact in lieu thereof forty-three new sections relating to the regulation of title insurance, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 374.046, 381.003, 381.009, 381.011, 381.015, 381.018,
2 381.021, 381.022, 381.025, 381.028, 381.031, 381.032, 381.035, 381.038, 381.041,
3 381.042, 381.045, 381.048, 381.051, 381.052, 381.055, 381.058, 381.061, 381.062,
4 381.065, 381.068, 381.071, 381.072, 381.075, 381.078, 381.081, 381.085, 381.088,
5 381.091, 381.092, 381.095, 381.098, 381.101, 381.102, 381.105, 381.108, 381.111,
6 381.112, 381.115, 381.118, 381.121, 381.122, 381.125, 381.131, 381.141, 381.151,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

7 381.161, 381.171, 381.181, 381.191, 381.201, 381.211, 381.221, 381.231, and
8 381.241, RSMo, and section 381.410 as enacted by conference committee
9 substitute for senate bill no. 664, eighty-eighth general assembly, second regular
10 session, and section 381.412 as enacted by house committee substitute for senate
11 bill no. 148, eighty-ninth general assembly, first regular session, and sections
12 381.410 and 381.412 as enacted by conference committee substitute for house
13 substitute for house committee substitute for senate committee substitute for
14 senate bill no. 894, ninetieth general assembly, second regular session, are
15 repealed and forty-three new sections enacted in lieu thereof, to be known as
16 sections 374.046, 374.047, 374.048, 374.049, 374.051, 374.055, 381.003, 381.009,
17 381.015, 381.018, 381.019, 381.022, 381.023, 381.024, 381.025, 381.026, 381.027,
18 381.028, 381.032, 381.033, 381.034, 381.038, 381.042, 381.045, 381.048, 381.052,
19 381.055, 381.058, 381.062, 381.065, 381.068, 381.072, 381.075, 381.076, 381.085,
20 381.112, 381.113, 381.115, 381.118, 381.122, 381.125, 381.410, and 381.412, to
21 read as follows:

374.046. 1. [(1) The director may issue cease and desist orders whenever
2 it appears to him upon competent and substantial evidence that any person is
3 acting in violation of any law of this state or any rule or regulation promulgated
4 by the director relating to the business of insurance. Before any cease and desist
5 order shall be issued, a copy of the proposed order together with an order to show
6 cause why such cease and desist order should not be issued shall be served either
7 personally or by certified mail on any person named therein.

8 (2) (a) Upon issuing any order to show cause the director shall notify the
9 person named therein that the person is entitled to a public hearing before the
10 director if a request for a hearing is made in writing to the director within fifteen
11 days from the day of the service of the order to show cause why the cease and
12 desist order should not be issued.

13 (b) The cease and desist order shall be issued fifteen days after the service
14 of the order to show cause if no request for a public hearing is made as above
15 provided.

16 (c) Upon receipt of a request for a hearing the director shall set a time
17 and place for the hearing which shall not be less than ten days or more than
18 fifteen days from the receipt of the request or as otherwise agreed upon by the
19 parties. Notice of the time and place shall be given by the director not less than
20 five days before the hearing.

21 (d) At the hearing the person may be represented by counsel and shall be
22 entitled to be advised of the nature and source of any adverse evidence procured

23 by the director and shall be given the opportunity to submit any relevant written
24 or oral evidence in his behalf to show cause why the cease and desist order should
25 not be issued.

26 (e) At the hearing the director shall have such powers as are conferred
27 upon him in section 374.190.

28 (f) At the conclusion of the hearing, or within ten days thereafter, the
29 director shall issue the cease and desist order as proposed or as subsequently
30 modified or notify the person that no order shall be issued.

31 (g) The circuit court of Cole County shall have jurisdiction to review any
32 cease and desist order of the director under the provisions of sections 536.100 to
33 536.150, RSMo; and, if any person against whom an order is issued fails to
34 request judicial review, or if, after judicial review, the director's cease and desist
35 order is upheld, the order shall become final.

36 **2.] If the director determines based upon substantial and**
37 **competent evidence that a person has engaged, is engaging, or is about**
38 **to engage in an act, practice, omission, or course of business constituting**
39 **a violation of the laws of this state relating to insurance in chapters 354**
40 **and 375 through 385, RSMo, or a rule adopted or order issued pursuant**
41 **thereto or that a person has materially aided, is materially aiding, or is**
42 **about to materially aid an act, practice, omission or course of business**
43 **constituting a violation of the laws of this state relating to insurance in**
44 **chapters 354 and 374 through 385, RSMo, or a rule adopted or order**
45 **issued pursuant thereto, the director may order the following relief:**

46 (1) An order directing the person to cease and desist from
47 engaging in the act, practice, omission, or course of business;

48 (2) A curative order or order directing the person to take other
49 action necessary or appropriate to comply with the insurance laws of
50 this state;

51 (3) Order a civil penalty or forfeiture as provided in section
52 374.049; and

53 (4) Award reasonable costs of the investigation.

54 2. In determining any relief sought, the director shall consider,
55 among other factors, whether:

56 (1) The violations are likely to continue or reoccur;

57 (2) Actual injury or harm was suffered by consumers;

58 (3) Restitution has been made to aggrieved consumers;

59 (4) The act, practice, omission, or course of business was detected

60 as part of a regular self-audit or internal compliance program and
61 immediately reported to the director; and

62 (5) The act, practice, omission, or course of business had been
63 previously detected, but inadequate policies and procedures were
64 implemented to prevent reoccurrence.

65 3. Unless the director determines that a summary order is
66 appropriate under subsection 4 of this section, the director shall provide
67 notice of the intent to initiate administrative enforcement by serving a
68 statement of the reasons for the action upon any person subject to the
69 proceedings. A statement of reasons, together with an order to show
70 cause why a cease and desist order and other relief should not be issued
71 shall be served either personally or by certified mail on any person
72 named therein. The director shall schedule a time and place at least ten
73 days thereafter for hearing, and after notice of and opportunity for
74 hearing to each person subject to the order, the director may issue a
75 final order under subsection 6 of this section.

76 4. If the director determines that sections 375.014, 375.144, or
77 375.310 are being violated and consumers are being aggrieved by the
78 violations, the order issued under subdivision (1) of subsection 1 of this
79 section may be summary and be effective on the date of issuance. Upon
80 issuance of the order, the director shall promptly serve each person
81 subject to the order with a copy of the order and a notice that the order
82 has been entered.

83 5. A summary order issued under subsection 4 of this section must
84 include a statement of the reasons for the order, notice that, within five
85 days after receipt of a request in a record from the person, the matter
86 will be scheduled for a hearing, and a statement whether the department
87 is seeking a civil penalty or costs of the investigation. If a person
88 subject to the order does not request a hearing and none is ordered by
89 the director within thirty days after the date of service of the order, the
90 order becomes final as to that person by operation of law. If a hearing
91 is requested or ordered, the director, after notice of and opportunity for
92 hearing to each person subject to the order, may modify or vacate the
93 order or extend it until final determination.

94 6. If a hearing is requested or ordered under subsection 2 or 5 of
95 this section, a hearing before the director or a hearing officer designated
96 by the director must be provided. A final order may not be issued unless

97 the director makes findings of fact and conclusions of law in a record in
98 accordance with the provisions of chapter 536, RSMo, and procedural
99 rules promulgated by the director. The final order may make final,
100 vacate, or modify the order issued under subsection 5 of this section.

101 7. In a final order under subsection 6 of this section, the director
102 may impose a civil penalty or forfeiture as provided in section 374.049.
103 No civil penalty or forfeiture may be imposed against a person unless
104 the person has engaged in the act, practice, omission, or course of
105 business constituting the violation.

106 8. In a final order, the director may charge the actual cost of an
107 investigation or proceeding for a violation of the insurance laws of this
108 state or a rule adopted or order issued pursuant thereto. These funds
109 may be paid to the director to the credit of the insurance dedicated
110 fund.

111 9. The director is authorized to issue subpoenas, compel
112 attendance of witnesses, administer oaths, hear testimony of witnesses,
113 receive evidence, and require the production of books, papers, records,
114 correspondence, and all other written instruments or documents
115 relevant to the proceeding and authorized in contested cases under the
116 provisions of chapter 536, RSMo, and procedural rules promulgated by
117 the director.

118 10. Statements of charges, notices, orders, and other processes of
119 the director may be served by anyone duly authorized by the director
120 either in the manner provided by law for service of process in civil
121 actions, or by registering or certifying and mailing a copy thereof to the
122 person affected by such statement, notice, order, or other process at his
123 or its residence or principal office or place of business. The verified
124 return by the person so serving such statement, notice, order, or other
125 process, setting forth the manner of such service, shall be proof of the
126 same, and the return postcard receipt for such statement, notice, order,
127 or other process, registered and mailed as aforesaid, shall be proof of the
128 service of the same.

129 11. If a petition for judicial review of a final order is not filed in
130 accordance with section 374.055, the director may file a certified copy of
131 the final order with the clerk of a court of competent jurisdiction. The
132 order so filed has the same effect as a judgment of the court and may be
133 recorded, enforced, or satisfied in the same manner as a judgment of the

134 court.

135 12. If a person violates or does not comply with an order under
136 this section, the director may under section 374.048 petition a court of
137 competent jurisdiction to enforce the order. The court may not require
138 the director to post a bond in an action or proceeding under this section.
139 If the court finds, after service and opportunity for hearing, that the
140 person was not in compliance with the order, the court may, in addition
141 to relief authorized in section 374.048, adjudge the person in civil
142 contempt of the order. A violation of or failure to comply with an order
143 under this section is a level three violation under section 374.049. The
144 court may impose a further civil penalty against the person for contempt
145 in an amount not less than five thousand dollars but not greater than
146 one hundred thousand dollars for each violation and may grant any
147 other relief the court determines is just and proper in the circumstances.

148 13. Until the expiration of the time allowed under section 374.055
149 for filing a petition for judicial review, if no such petition has been duly
150 filed within such time or, if a petition for review has been filed within
151 such time, then until the transcript of the record in the proceeding has
152 been filed in the circuit court of Cole County, the director may at any
153 time, upon such notice and in such manner as he shall deem proper,
154 modify or set aside in whole or in part any order issued by him under
155 this section.

156 14. The enforcement authority of the director under this section
157 is cumulative to any other statutory authority of the director.

158 15. The director is authorized to issue administrative consent
159 orders in the public interest as complete or partial settlement of any
160 investigation, examination or other proceeding, which curative orders
161 may contain any provision necessary or appropriate to assure
162 compliance with the insurance laws of this state, require payment of
163 restitution to be distributed directly or by the director to any aggrieved
164 consumers, civil penalties or voluntary forfeiture, reimbursement for
165 costs of investigation or examination, or any other relief deemed by the
166 director to be necessary and appropriate. Any remaining matters not
167 addressed in settlement may be submitted to the director through a
168 contested proceeding under this section.

169 16. (1) Any person willfully violating any provision of any cease and
170 desist order of the director after it becomes final, while the same is in force, upon

171 conviction thereof shall be punished by a fine of not more than one **hundred**
172 thousand dollars or [one year in jail] **by imprisonment of up to ten years or**
173 by both such fine and [jail sentence] **imprisonment.**

174 (2) In addition to any other penalty provided, violation of any cease and
175 desist order shall subject the violator to suspension or revocation of any
176 certificate of authority or license as may be applicable under the laws of this state
177 relating to the business of insurance.

178 [3. (1) When it appears to the director that there is a violation of the laws
179 of this state or any rule or regulation promulgated by the director relating to the
180 business of insurance, and that the continuance of the acts or actions of any
181 person as herein defined would produce injury to the insuring public or to any
182 other person in this state, or when it appears that a person is doing or
183 threatening to do some act in violation of the laws of this state relating to
184 insurance, the director may file a petition for injunction in the circuit court of
185 Cole County, Missouri, in which he may ask for a temporary injunction or
186 restraining order as well as a permanent injunction to restrain the act or
187 threatened act. In the event the temporary injunction or restraining order or a
188 permanent injunction is issued by the circuit court of Cole County, Missouri, no
189 person against whom the temporary injunction or restraining order or permanent
190 injunction is granted shall do or continue to do any of the acts or actions
191 complained of in the petition for injunction, unless and until the temporary
192 injunction or restraining order or permanent injunction is vacated, dismissed or
193 otherwise terminated.

194 (2) Any writ of injunction issued under this law may be served and
195 enforced as provided by law in injunctions issued in other cases, but the director
196 of the insurance department shall not be required to give any bond as preliminary
197 to or in the course of any proceedings to which he is a party as director under this
198 section, either for costs or for any injunction, or in case of appeal to either the
199 supreme court or to any appellate court.

200 4.] 17. The term "person" as used in this [section] **chapter** shall include
201 any individual, partnership, corporation, association or trust, or any other legal
202 entity.

374.047. 1. If the director determines based upon substantial and
2 competent evidence that a corporation or insurer with a certificate of
3 authority under the laws relating to insurance has willfully engaged in
4 an act, practice, omission or course of business constituting a level
5 three, four or five violation of the laws of this state relating to insurance

6 in chapter 354, RSMo, and chapters 375 through 385, RSMo, or been
7 convicted of any felony or misdemeanor under any state or federal law,
8 the director may, after hearing, issue an order suspending or revoking
9 the certificate of authority.

10 2. Prior to issuance of the order under this section, the director
11 shall give at least thirty days' notice with a statement of reasons for the
12 action and afford such corporation or insurer the opportunity for a
13 hearing upon written request. If such corporation or insurer requests
14 a hearing in writing, a final order of suspension or revocation may not
15 be issued unless the director makes findings of fact and conclusions of
16 law in a record in accordance with the contested case provisions of
17 chapter 536, RSMo, and procedural rules promulgated by the director.

18 3. The enforcement authority of the director under this section is
19 cumulative to any other statutory authority of the director.

374.048. 1. If the director believes that a person has engaged, is
2 engaging, or is about to engage in an act, practice, omission, or course
3 of business constituting a violation of the laws of this state relating to
4 insurance in chapter 354, RSMo, and chapters 375 through 385, RSMo, or
5 a rule adopted or order issued pursuant thereto or that a person has, is,
6 or is about to engage in an act, practice, omission, or course of business
7 that materially aids a violation of the laws of this state relating to
8 insurance in chapter 354, RSMo, and chapters 375 through 385, RSMo, or
9 a rule adopted or order issued pursuant thereto, the director may
10 maintain an action in the circuit court of any county of the state or any
11 city not within a county to enjoin the act, practice, omission, or course
12 of business and to enforce compliance with the laws of this state relating
13 to insurance or a rule adopted or order issued by the director.

14 2. In an action under this section and on a proper showing, the
15 court may:

16 (1) Issue a permanent or temporary injunction, restraining order,
17 or declaratory judgment;

18 (2) Order other appropriate or ancillary relief, which may include:

19 (a) An asset freeze, accounting, writ of attachment, writ of general
20 or specific execution, and appointment of a receiver or conservator, that
21 may be the director, for the defendant or the defendant's assets;

22 (b) Ordering the director to take charge and control of a
23 defendant's property, including accounts in a depository institution,

24 rents, and profits; to collect debts; and to acquire and dispose of
25 property;

26 (c) Imposing a civil penalty or forfeiture as provided in section
27 374.049;

28 (d) Upon the showing of financial loss, injury or harm to
29 identifiable consumers, imposing an order of restitution or disgorgement
30 directed to a person that has engaged in an act, practice, omission, or
31 course of business in violation of the laws or rules relating to insurance;

32 (e) Ordering the payment of prejudgment and post-judgment
33 interest;

34 (f) Ordering reasonable costs of investigation and prosecution;
35 and

36 (g) Ordering the payment to the insurance dedicated fund an
37 additional amount equal to ten percent of the total restitution or
38 disgorgement ordered, or such other amount as awarded by the court,
39 which shall be appropriated to an insurance consumer education
40 program administered by the director; or

41 (3) Order such other relief as the court considers necessary or
42 appropriate.

43 3. The director may not be required to post a bond in an action or
44 proceeding under this section.

45 4. The case may be brought in the circuit court of Cole County,
46 any county or city not within a county in which a violation has occurred,
47 or any county or city not within a county, which has venue of an action
48 against the person, partnership or corporation under other provisions
49 of law.

50 5. The enforcement authority of the director under this section is
51 cumulative to any other authority of the director to impose orders under
52 other provisions of the insurance laws of this state.

53 6. If the director determines it to be in the public interest, the
54 director is authorized to enter into a consent injunction and judgment
55 in the settlement of any proceeding under the laws of this state relating
56 to insurance in chapter 354, RSMo, and chapters 375 through 385, RSMo.

57 7. A "Consumer Restitution Fund" shall be created for the purpose
58 of preserving and distributing to aggrieved consumers, disgorgement or
59 restitution funds obtained through enforcement proceedings brought by
60 the director. In addition to the equitable powers of the court authorized

61 above, the court may order that such funds be paid into the consumer
62 restitution fund for distribution to aggrieved consumers. It shall be the
63 duty of the director to distribute such funds to those persons injured by
64 the unlawful acts, practices, omissions, or courses of business by the
65 subject of the proceeding. Notwithstanding the provisions of section
66 33.080, RSMo, any funds remaining in the director's consumer restitution
67 fund at the end of any biennium shall not be transferred to the general
68 revenue fund, but if the director is unable with reasonable efforts to
69 ascertain the aggrieved consumers, then the funds may be transferred
70 to the insurance dedicated fund to be used for consumer education.

374.049. 1. Violations of the laws of this state relating to
2 insurance in chapter 354, RSMo, and chapters 375 through 385, RSMo, or
3 a rule adopted or order issued by the director, are classified for the
4 purpose of civil penalties and forfeitures into the following five
5 categories:

- 6 (1) Level one violations;
- 7 (2) Level two violations;
- 8 (3) Level three violations;
- 9 (4) Level four violations; and
- 10 (5) Level five violations.

11 2. An order to impose a civil penalty or forfeiture, when imposed
12 by the director in an administrative proceeding under section 374.046 on
13 a person for any violation of the laws of this state relating to insurance
14 in chapter 354, RSMo, and chapters 375 through 385, RSMo, or a rule
15 adopted or order issued by the director, shall be an order to pay an
16 amount not exceeding the following:

- 17 (1) No civil penalty or forfeiture for a level one violation;
- 18 (2) One thousand dollars per each level two violation, up to an
19 aggregate civil penalty or forfeiture of fifty thousand dollars per annum
20 for multiple violations;
- 21 (3) Five thousand dollars per each level three violation, up to an
22 aggregate civil penalty or forfeiture of one hundred thousand dollars per
23 annum for multiple violations;
- 24 (4) Ten thousand dollars per each level four violation, up to an
25 aggregate civil penalty or forfeiture of two hundred fifty thousand
26 dollars per annum for multiple violations;
- 27 (5) Fifty thousand dollars per each level five violation, up to an

28 aggregate civil penalty or forfeiture of two hundred fifty thousand
29 dollars per annum for multiple violations.

30 3. An order to impose a civil penalty or forfeiture, when imposed
31 by the court in an enforcement proceeding under section 374.048 on a
32 person for any violation of the laws of this state relating to insurance in
33 chapter 354, RSMo, and chapters 375 through 385, RSMo, or a rule
34 adopted or order issued by the director, shall be an order to pay an
35 amount not exceeding the following:

36 (1) No civil penalty or forfeiture for a level one violation;

37 (2) One thousand dollars per each level two violation, up to an
38 aggregate civil penalty or forfeiture of fifty thousand dollars per annum
39 for multiple violations;

40 (3) Five thousand dollars per each level three violation, up to an
41 aggregate civil penalty or forfeiture of two hundred thousand dollars per
42 annum for multiple violations;

43 (4) Twenty thousand dollars per each level four violation, up to
44 an aggregate civil penalty or forfeiture of one million dollars per annum
45 for multiple violations;

46 (5) One million dollars per each level five violation, with no limit
47 to civil penalties or forfeitures for multiple violations.

48 4. No civil penalty or forfeiture may be imposed against a person,
49 unless the person has engaged in the act, practice, omission, or course
50 of business constituting the violation.

51 5. Any violation of the laws of this state relating to insurance in
52 chapter 354, RSMo, and chapters 375 through 385, RSMo, which is not
53 classified or does not authorize a specific range for a civil penalty or
54 forfeiture for violations, shall be classified as a level one violation. In
55 bringing an action to enforce a rule adopted by the director, unless the
56 conduct that violates the rule also violates the enabling statute, the
57 violation shall be classified as a level one violation.

58 6. The civil penalties or forfeitures set forth in this section
59 establish a maximum range. The court, or the director in administrative
60 enforcement, shall consider all of the circumstances, including the
61 nature of violations to determine whether, and to any extent, a civil
62 penalty or forfeiture is justified.

63 7. In any enforcement proceeding, the court, or director in
64 administrative enforcement, may enhance the civil penalty or forfeiture

65 with a one classification step increase under this section, if the violation
66 was knowing. The court, or director in administrative enforcement, may
67 enhance the civil penalty or forfeiture with a two level increase if the
68 violation was knowingly committed in conscious disregard of the law.

69 8. In any enforcement proceeding, the court, or director in
70 administrative enforcement, may enhance the civil penalty or forfeiture
71 with a one classification step increase under this section, if the
72 violations resulted in actual financial loss or injury to consumers.

73 9. In any enforcement proceeding, the court, or director in
74 administrative enforcement, shall reduce the civil penalty or forfeiture
75 on that person with a one classification step reduction under this
76 section, if prior to receiving notice of the violation from the department,
77 the person detects the violation through a regular self-audit or internal
78 compliance program reasonably designed to detect and prevent
79 insurance law violations and immediately reports the violation to the
80 director.

81 10. Any civil penalty or forfeiture recovered by the director shall
82 be paid to the treasurer and then distributed to the public schools as
83 required by Article IX, section 7 of the Missouri Constitution.

84 11. The penalties and forfeitures authorized by this section
85 govern all actions and proceedings that are instituted on the basis of
86 conduct occurring after August 31, 2006.

374.051. 1. Any applicant refused a license by order of the
2 director under sections 374.755, 374.787, and 375.141, RSMo, may file a
3 petition with the administrative hearing commission alleging that the
4 director has refused the license. The administrative hearing commission
5 shall conduct hearings and make findings of fact and conclusions of
6 law. The director shall have the burden of proving cause for refusal.

7 2. If a proceeding is instituted to revoke or suspend a license of
8 any person under sections 374.755, 374.787, and 375.141, RSMo, the
9 director shall refer the matter to the administrative hearing
10 commission. The administrative hearing commission shall conduct
11 hearings and make findings of fact and conclusions of law in such
12 cases. The director shall have the burden of proving cause for
13 discipline. The administrative hearing commission shall submit its
14 findings of fact and conclusions of law to the director for final
15 disposition. If cause is found, the director may determine appropriate

16 discipline.

17 **3. Hearing procedures before the director or the administrative**
18 **hearing commission and judicial review of the decisions and orders of**
19 **the director and of the administrative hearing commission, and all other**
20 **procedural matters pursuant to this chapter shall be governed by the**
21 **provisions of chapter 536, RSMo. Hearings before the administrative**
22 **hearing commission shall also be governed by the provisions of chapter**
23 **621, RSMo.**

374.055. 1. Except as otherwise provided, any interested person
2 **aggrieved by any order of the director under the laws of this state**
3 **relating to insurance in chapter 354 and chapters 375 through 385,**
4 **RSMo, or a rule adopted by the director, or by any refusal or failure of**
5 **the director to make an order pursuant to any of said provisions, shall**
6 **be entitled to a hearing before the director in accordance with the**
7 **provisions of chapter 536, RSMo. A final order issued by the director is**
8 **subject to judicial review in accordance with the provisions of chapter**
9 **536, RSMo.**

10 **2. A rule adopted by the director is subject to judicial review in**
11 **accordance with the provisions of chapter 536, RSMo.**

381.003. 1. Sections 381.003 to 381.412 shall be known and may be
2 **cited as the "Missouri Title Insurance Act".**

3 **2. Except as otherwise expressly provided in this chapter and**
4 **except where the context otherwise requires, all provisions of the laws**
5 **of this state relating to insurance and insurance companies generally**
6 **shall apply to title insurance, title insurers, and title agents.**

381.009. As used in this chapter, the following terms mean:

2 **(1) "Abstract of title" or "abstract", a written history, synopsis, or**
3 **summary of the recorded instruments affecting the title to real property;**

4 **(2) "Affiliate", a specific person that directly, or indirectly through**
5 **one or more intermediaries, controls, or is controlled by, or is under**
6 **common control with, the person specified;**

7 **(3) "Affiliated business", any portion of a title insurance agency's**
8 **business written in this state that was referred to it by a producer of**
9 **title insurance business or by an associate of the producer, where the**
10 **producer or associate, or both, have a financial interest in the title**
11 **agency;**

12 **(4) "Associate", any:**

13 (a) Business organized for profit in which a producer of title
14 business is a director, officer, partner, employee, or an owner of a
15 financial interest;

16 (b) Employee of a producer of title business;

17 (c) Franchisor or franchisee of a producer of title business;

18 (d) Spouse, parent, or child of a producer of title insurance
19 business who is a natural person;

20 (e) Person, other than a natural person, that controls, is
21 controlled by, or is under common control with, a producer of title
22 business;

23 (f) Person with whom a producer of title insurance business or
24 any associate of the producer has an agreement, arrangement, or
25 understanding, or pursues a course of conduct, the purpose or effect of
26 which is to provide financial benefits to that producer or associate for
27 the referral of business;

28 (5) "Control", including the terms "controlling", "controlled by", and
29 "under common control with", the possession, direct or indirect, of the
30 power to direct or cause the direction of the management and policies
31 of a person, whether through the ownership of voting securities, by
32 contract other than a commercial contract for goods or nonmanagement
33 services, or otherwise, unless the power is the result of an official
34 position or corporate office held by the person. Control shall be
35 presumed to exist if a person, directly or indirectly, owns, controls,
36 holds with the power to vote, or holds proxies representing ten percent
37 or more of the voting securities of another person. This presumption
38 may be rebutted by showing that control does not exist in fact. The
39 director may determine, after furnishing all persons in interest notice
40 and opportunity to be heard and making specific findings of fact to
41 support the determination, that control exists in fact, notwithstanding
42 the absence of a presumption to that effect;

43 (6) "County" or "counties" includes any city not within a county;

44 (7) "Direct operations", that portion of a title insurer's operations
45 which are attributable to business written by a bona fide employee;

46 (8) "Director", the director of the department of insurance, or the
47 director's representatives;

48 (9) "Escrow", written instruments, money or other items deposited
49 by one party with a depository, escrow agent, or escrowee for delivery

50 to another party upon the performance of a specified condition or the
51 happening of a certain event;

52 (10) "Escrow, settlement or closing fee", the consideration for
53 supervising or handling the actual execution, delivery, or recording of
54 transfer and lien documents and for disbursing funds;

55 (11) "Financial interest", a direct or indirect legal or beneficial
56 interest, where the holder is or will be entitled to five percent or more
57 of the net profits or net worth of the entity in which the interest is held;

58 (12) "Foreign title insurer", any title insurer incorporated or
59 organized under the laws of any other state of the United States, the
60 District of Columbia, or any other jurisdiction of the United States;

61 (13) "Geographically indexed or retrievable", a system of keeping
62 recorded documents which includes as a component a method for
63 discovery of the documents by:

64 (a) Searching an index arranged according to the description of
65 the affected land; or

66 (b) An electronic search by description of the affected land;

67 (14) "Net retained liability", the total liability retained by a title
68 insurer for a single risk, after taking into account any ceded liability
69 and collateral, acceptable to the director, and maintained by the insurer;

70 (15) "Non-United States title insurer", any title insurer
71 incorporated or organized under the laws of any foreign nation or any
72 province or territory;

73 (16) "Premium", the consideration paid by or on behalf of the
74 insured for the issuance of a title insurance policy, closing protection,
75 or any endorsement or special coverage, consistent with the reporting
76 requirements for gross risk rate premiums in the accounting practices
77 and procedures manual adopted by the National Association of
78 Insurance Commissioners. Premium would also contemplate an amount
79 retained by agents, abtractors or attorneys, overhead and miscellaneous
80 expenses, expected losses and loss adjustment expense from
81 underwriting the risk and profit margin, but does not include the cost
82 of abstract or title search or examination fees, settlement, or escrow
83 services, noninsurance-related information services, or any other items
84 or services not specified in this chapter;

85 (17) "Producer", any person, including any officer, director, or
86 owner of five percent or more of the equity or capital of any person,

87 engaged in this state in the trade, business, occupation, or profession of:

88 (a) Buying or selling interests in real property;

89 (b) Making loans secured by interests in real property; or

90 (c) Acting as broker, agent, representative, or attorney of a person

91 who buys or sells any interest in real property or who lends or borrows

92 money with the interest as security;

93 (18) "Qualified depository institution", an institution that is:

94 (a) Organized or, in the case of a United States branch or agency

95 office of a foreign banking organization, licensed under the laws of the

96 United States or any state and has been granted authority to operate

97 with fiduciary powers;

98 (b) Regulated, supervised, and examined by federal or state

99 authorities having regulatory authority over banks and trust companies;

100 (c) Insured by the appropriate federal entity; and

101 (d) Qualified under any additional rules established by the

102 director;

103 (19) "Referral", the directing or the exercising of any power or

104 influence over the direction of title insurance business, whether or not

105 the consent or approval of any other person is sought or obtained with

106 respect to the referral;

107 (20) "Search", "search of the public records", or "search of title", a

108 search of those records established by the laws of this state for the

109 purpose of imparting constructive notice of matters relating to real

110 property to purchasers for value and without knowledge;

111 (21) "Security" or "security deposit", funds or other property

112 received by the title insurer as collateral to secure an indemnitor's

113 obligation under an indemnity agreement under which the insurer is

114 granted a perfected security interest in the collateral in exchange for

115 agreeing to provide coverage in a title insurance policy for a specific

116 title exception to coverage;

117 (22) "Subsidiary", an affiliate controlled by a person directly or

118 indirectly through one or more intermediaries;

119 (23) "Title agency", an authorized person who issues title

120 insurance on behalf of a title insurer. An attorney licensed to practice

121 law in this state who issues title insurance as a part of his or her law

122 practice, but does not maintain or operate a title insurance business

123 separate from such law practice is not a title agency;

124 **(24) "Title agent" or "agent", an attorney licensed to practice law**
125 **in this state who issues title insurance as part of his or her law practice,**
126 **but who is not affiliated with or acting on behalf of a title agency, or an**
127 **authorized person who performs one or more of the following acts in**
128 **conjunction with the issuance of a title insurance commitment or policy:**

129 **(a) Determines insurability;**

130 **(b) Performs searches;**

131 **(c) Handles escrows, settlements, or closings; or**

132 **(d) Solicits or negotiates title insurance business;**

133 **(25) "Title insurance business" or "business of title insurance":**

134 **(a) Issuing as insurer or offering to issue as insurer a title**
135 **insurance policy;**

136 **(b) Transacting or proposing to transact by a title insurer any of**
137 **the following activities when conducted or performed in contemplation**
138 **of and in conjunction with the issuance of a title insurance policy:**

139 **a. Soliciting or negotiating the issuance of a title insurance**
140 **policy;**

141 **b. Guaranteeing, warranting, or otherwise insuring the**
142 **correctness of title searches for all instruments affecting titles to real**
143 **property, any interest in real property, cooperative units, and**
144 **proprietary leases and for all liens or charges affecting the same;**

145 **c. Handling of escrows, settlements, or closings;**

146 **d. Executing title insurance policies;**

147 **e. Effecting contracts of reinsurance; or**

148 **f. Abstracting, searching, or examining titles;**

149 **(c) Guaranteeing, warranting, or insuring searches or**
150 **examinations of title to real property or any interest in real property;**

151 **(d) Guaranteeing or warranting the status of title as to ownership**
152 **of or liens on real property by any person other than the principals to**
153 **the transaction;**

154 **(e) Promising to purchase or repurchase for consideration an**
155 **indebtedness because of a title defect, whether or not involving a**
156 **transfer of risk to a third person; or**

157 **(f) Promising to indemnify the holder of a mortgage or deed of**
158 **trust against loss from the failure of the borrower to pay the mortgage**
159 **or deed of trust when due if the property fails to yield sufficient**
160 **proceeds upon foreclosure to satisfy the debt, when one or both of the**

161 following conditions exist:

162 a. The security has been impaired by the discovery of a previously
163 unknown property interest in favor of one who is not liable for the
164 payment of the mortgage or deed of trust; or

165 b. Perfection of the position of the mortgage or deed of trust
166 which was assured to exist cannot be obtained, notwithstanding timely
167 recordation with the recorder of deeds of the county in which the
168 property is located; or

169 (g) Doing or proposing to do any business substantially equivalent
170 to any of the activities listed in this subdivision in a manner designed
171 to evade the provisions of this chapter;

172 (26) "Title insurance commitment" or "commitment", a preliminary
173 report, commitment, or binder issued prior to the issuance of a title
174 insurance policy containing the terms, conditions, exceptions, and other
175 matters incorporated by reference under which the title insurer is
176 willing to issue its title insurance policy. A title insurance commitment
177 is not an abstract of title;

178 (27) "Title insurance policy" or "policy", a contract insuring or
179 indemnifying owners of, or other persons lawfully interested in, real
180 property or any interest in real property, against loss or damage arising
181 from any or all of the following conditions existing on or before the
182 policy date and not excepted or excluded:

183 (a) Title to the estate or interest in land being otherwise than as
184 stated in the policy;

185 (b) Defects in or liens or encumbrances on the insured title;

186 (c) Unmarketability of the insured title;

187 (d) Lack of legal right of access to the land;

188 (e) Invalidity or unenforceability of the lien of an insured
189 mortgage;

190 (f) The priority of a lien or encumbrance over the lien of any
191 insured mortgage;

192 (g) The lack of priority of the lien of an insured mortgage over a
193 statutory lien for services, labor, or material;

194 (h) The invalidity or unenforceability of an assignment of the
195 insured mortgage; or

196 (i) Rights or claims relating to the use of or title to the land;

197 (28) "Title insurer" or "insurer", a company organized under the

198 laws of this state for the purpose of transacting the business of title
199 insurance and any foreign or non-United States title insurer licensed in
200 this state to transact the business of title insurance;

201 (29) "Title plant", a set of records encompassing at least the most
202 recent forty-five years, consisting of documents, maps, surveys, or
203 entries affecting title to real property or any interest in or encumbrance
204 on the property, which have been filed or recorded in the jurisdiction
205 for which the title plant is established or maintained. The records in the
206 title plant shall be geographically indexed or retrievable as to those
207 records containing a legal description of affected land, and otherwise by
208 name of affected person;

209 (30) "Underwrite", the authority to accept or reject risk on behalf
210 of the title insurer;

211 (31) "Underwriting charge", the charge that is reasonably
212 necessary to determine the insurability of the resale of an owner-
213 occupied residential property whose value does not exceed the median
214 value within its geographic region, with such determination of
215 insurability made in accordance with sound underwriting practices
216 based upon a reasonable examination of records revealed in the abstract,
217 title search, or other sources.

381.015. 1. When a title insurance commitment issued by a title
2 insurer, title agency, or title agent includes an offer to issue an owner's
3 policy covering the resale of owner-occupied residential property, the
4 commitment shall incorporate the following statement in bold type:

5 "Please read the exceptions and the terms shown or referred to
6 herein carefully. The exceptions are meant to provide you with notice
7 of matters which are not covered under the terms of the title insurance
8 policy and should be carefully considered."

9 2. A title insurer, title agency, or title agent issuing a lender's title
10 insurance policy in conjunction with a mortgage loan made
11 simultaneously with the purchase of all or part of the real estate
12 securing the loan, where no owner's title insurance policy has been
13 requested, shall give written notice, on a form prescribed or approved
14 by the director, to the purchaser-mortgagor at the time the commitment
15 is prepared. The notice shall explain that a lender's title insurance
16 policy is to be issued protecting the mortgage-lender, and that the policy
17 does not provide title insurance protection to the purchaser-mortgagor

18 as the owner of the property being purchased. The notice shall explain
19 what a title policy insures against and what possible exposures exist for
20 the purchaser-mortgagor that could be insured against through the
21 purchase of an owner's policy. The notice shall also explain that the
22 purchaser-mortgagor may obtain an owner's title insurance policy
23 protecting the property owner at a specified cost or approximate cost,
24 if the proposed coverages are or amount of insurance is not then known.
25 A copy of the notice, signed by the purchaser-mortgagor, shall be retained
26 in the relevant underwriting file at least fifteen years after the effective
27 date of the policy.

28 3. A violation of any provision under this section is a level one
29 violation under section 374.049, RSMo.

381.018. 1. The title insurer shall not allow the issuance of its
2 commitments or policies by a title agency or title agent not affiliated
3 with a title agency unless there is in force a written contract between
4 the parties which sets forth the responsibilities of each party or, where
5 both parties share responsibility for particular functions, specifies the
6 division of responsibilities.

7 2. The title insurer shall maintain an inventory of all policy
8 numbers allocated to each title agency or title agent not affiliated with
9 a title agency.

10 3. The title insurer shall have on file proof that the title agency
11 or title agent is licensed by this state.

12 4. The title insurer shall establish the underwriting guidelines
13 and, where applicable, limitations on title claims settlement authority
14 to be incorporated into contracts with its title agencies and title agents
15 not affiliated with a title agency.

16 5. If a title insurer terminates its agency with a title agency
17 licensed under this chapter, the insurer shall, within seven days of the
18 termination, notify the director of the reasons for termination, including
19 any information that is required to be reported under subsection 5 of
20 section 375.022, RSMo.

21 6. A violation of any provision under this section is a level two
22 violation under section 374.049, RSMo.

381.019. 1. A title insurer, title agency or title agent participating
2 in residential closings using the Housing and Urban Development
3 settlement statement (form HUD-1) shall provide clear and conspicuous

4 disclosure of charges. The director may adopt rules not in conflict with
5 provisions of the federal Real Estate Settlement Procedures Act, as
6 amended, under section 381.042 to implement disclosure of the following:

- 7 (1) Premium as defined in section 381.009;
- 8 (2) Abstract or title search fee;
- 9 (3) Settlement or closing fees;
- 10 (4) Policy issuance fees under section 381.113; and
- 11 (5) Any other associated fees along with a concise description.

12 2. A violation of any provision under this section is a level two
13 violation under section 374.049, RSMo.

381.022. 1. A title insurer, title agency, or title agent not affiliated
2 with a title agency may operate as an escrow, security, settlement, or
3 closing agent, provided that all funds deposited with the title insurer,
4 title agency, or title agent not affiliated with a title agency in connection
5 with any escrow, settlement, closing, or security deposit shall be
6 submitted for collection to or deposited in a separate fiduciary trust
7 account or accounts in a qualified depository institution no later than
8 the close of the next business day after receipt, in accordance with the
9 following requirements:

10 (1) The funds shall be the property of the person or persons
11 entitled to them under the provisions of the escrow, settlement, security
12 deposit, or closing agreement and shall be segregated for each
13 depository by escrow, settlement, security deposit, or closing in the
14 records of the title insurer, title agency, or title agent not affiliated with
15 a title agency, in a manner that permits the funds to be identified on an
16 individual basis and in accordance with the terms of the individual
17 instructions or agreements under which the funds were accepted; and

18 (2) The funds shall be applied only in accordance with the terms
19 of the individual instructions or agreements under which the funds were
20 accepted.

21 2. It is unlawful for any person to:

22 (1) Commingle personal or any other moneys with escrow funds;

23 (2) Use escrow funds to pay or indemnify against debts of the title
24 insurance agent or of any other person;

25 (3) Use escrow funds for any purpose other than to fulfill the
26 terms of the individual escrow after the necessary conditions of the
27 escrow have been met;

28 (4) Disburse any funds held in an escrow account unless the
29 disbursement is made under a written instruction or agreement
30 specifying under what conditions and to whom such funds may be
31 disbursed or under an order of a court of competent jurisdiction; or

32 (5) Disburse any funds held in a security deposit account unless
33 the disbursement is made under a written agreement specifying:

34 (a) What actions the indemnitor shall take to satisfy his or her
35 obligation under the agreement;

36 (b) The duties of the title insurer, title agency, or title agent not
37 affiliated with a title agency with respect to disposition of the funds
38 held, including a requirement to maintain evidence of the disposition of
39 the title exception before any balance may be paid over to the depositing
40 party or his or her designee; and

41 (c) Any other provisions the director may require by rule or
42 order.

43 3. Notwithstanding the provisions of subsection 2 of this section,
44 any interest received on funds deposited in connection with any escrow,
45 settlement, security deposit, or closing may be retained by the title
46 insurer, title agency, or title agent not affiliated with a title agency as
47 compensation for administration of the escrow or security deposit,
48 unless the instructions for the funds or a governing statute provides
49 otherwise.

50 4. A violation of any provision under this section is a level three
51 violation under section 374.049, RSMo.

 381.023. 1. A title insurer shall, at least annually, conduct an
2 onsite review of the underwriting, claims, and escrow practices of the
3 title insurance agency or agent with which it has a contract. If the title
4 insurance agency or agent does not maintain separate fiduciary trust
5 accounts for each title insurer it represents, the title insurer shall verify
6 that the funds held on its behalf are reasonably ascertainable from the
7 books of account and records of the title insurance agency or agent.

8 2. Each title insurer authorized to do business in Missouri shall
9 adopt and utilize the following standards and procedures for the on-site
10 review of title insurance agents and agencies. On-site review
11 documentation, work papers, summaries, and reports shall be
12 maintained by each title insurer for a period of at least four years and
13 shall be made available to the director for examination upon request. A

14 report shall be prepared by the title insurer at the completion of the on-
15 site review setting forth the title insurer's findings. On-site review
16 findings shall include, but not be limited to, the following:

17 (1) A review of contracts between the title insurer and the title
18 insurance agency or agent;

19 (2) A statement of financial condition of the title insurance agency
20 or agent, certified by the title insurance agent or designated agent of the
21 agency under oath or by affirmation as being a true and accurate
22 representation of financial condition;

23 (3) A review of management practices related to conflicts of
24 interest, affiliated business arrangements, and regulatory compliance;

25 (4) Reconciliation of orders with commitments, title searches, title
26 policies, and collection of premiums;

27 (5) A review of the procedures for tracking issued commitments;

28 (6) A review of the practices to cancel commitments on
29 transactions that do not close;

30 (7) A review of the procedures for follow-up after closing to track
31 status of outstanding conditions required for timely issuance of policies;

32 (8) A review of the procedures for voiding policies;

33 (9) A review of the tracking of open escrow, security, settlement
34 or closing files;

35 (10) A review of issued policy reports to the title insurer by the
36 title insurance agency or agent;

37 (11) A review of any files awaiting policy issuance that includes
38 a determination of the average length of time between closing and the
39 issuance of the title policy; and

40 (12) A review of a three-way reconciliation of bank balance, book
41 balance and escrow trial balance for each individual escrow bank
42 account.

43 3. If the agent or agency is an agent or agency for two or more
44 title insurers, the title insurers may cooperate in complying with the
45 requirements of this section.

46 4. The title insurer shall provide a copy of the report of each such
47 review it performs to the director. The director may promulgate rules
48 setting forth the minimum threshold level at which a review would be
49 required, the standards thereof and the form of report required.

50 5. A violation of any provision under this section is a level two

51 violation under section 374.049, RSMo.

381.024. 1. It is unlawful for any title agency or title agent not
2 affiliated with an agency to deny reasonable access or in any manner fail
3 to cooperate with its underwriters in the title insurers' reviews of the
4 agency's or agent's escrow, settlement, closing and security deposit
5 accounts.

6 2. It is unlawful for any title agency or title agent not affiliated
7 with an agency, appointed by two or more title insurers, to deny any of
8 the title insurers reasonable access to the fiduciary trust accounts in
9 connection with providing escrow or closing settlement services, and
10 any or all of the supporting account information in order to ascertain
11 the safety and security of the funds held by the title agency or title
12 agent.

13 3. A violation of any provision under this section is a level two
14 violation under section 374.049, RSMo.

381.025. 1. A title insurer, title agency, title agent, or other person
2 shall not give or receive, directly or indirectly, any consideration for the
3 referral of title insurance business, escrow, closing, or other service
4 provided by a title insurer, title agency, or title agent.

5 2. A violation of any provision under this section is a level three
6 violation under section 374.049, RSMo.

7 3. If the director fails to initiate a proceeding to enforce this
8 section within forty-five days following receipt of written notice of such
9 violation, any title insurer, title agency, or title agent doing business in
10 the same county may maintain an action for injunctive relief against a
11 title insurer, title agency, or title agent violating any provision of this
12 section. In any action under this subsection, the court may award to the
13 successful party the court costs of the action together with reasonable
14 attorney fees.

381.026. 1. The settlement agent shall record all deeds and
2 security instruments for real estate closings handled by it within five
3 business days after completion of all conditions precedent thereto.

4 2. Nothing in this chapter shall be deemed to prohibit the
5 recording of documents prior to the time funds are available for
6 disbursement with respect to a transaction in which a title insurer, title
7 agency, or title agent not affiliated with a title agency is the settlement
8 agent, provided all parties to whom payment will become due upon such

9 recording consent thereto in writing.

381.027. A title insurer is liable for the defalcation, conversion, or
2 misappropriation by a licensed title insurance agent or agency of funds
3 held in trust by the agent or agency under section 381.022. If the agent
4 or agency is an agent or agency for two or more title insurers, any
5 liability shall be borne by the title insurer upon which a title insurance
6 commitment or policy was issued prior to the illegal act. If no
7 commitment or policy was issued, each title insurer represented by the
8 agent or agency at the time of the illegal act shares in the liability in the
9 same proportion that the premium remitted to it by the agent or agency
10 during the one-year period before the illegal act bears to the total
11 premium remitted to all title insurers by the agent or agency during the
12 same time period.

381.028. 1. No title insurer, title agency, or title agent shall
2 participate in any transaction in which it knows that an agent or other
3 person requires, directly or indirectly, or through any trustee, director,
4 officer, agent, employee, or affiliate, as a condition, agreement, or
5 understanding to selling or furnishing any other person a loan, or loan
6 extension, credit, sale, property, contract, lease, or service, that the
7 other person shall place a title insurance policy of any kind with the
8 title insurer or through a particular title agency or agent.

9 2. It is unlawful for any title insurer, title agency, title agent, or
10 any employee or representative thereof, to:

11 (1) Pay, allow or give, or offer to pay, allow or give, directly or
12 indirectly, as an inducement to insurance, or after insurance has been
13 effected, any rebate, discount, abatement, credit or reduction of the
14 premium named in the policy of insurance, or any special favor or
15 advantage in the dividends or other benefits to accrue thereon, or any
16 valuable consideration or inducement whatever, not specified or
17 provided for in the policy, except to the extent provided for in the
18 applicable filing with the director;

19 (2) Pay, allow or give, or offer to pay, allow or give, directly or
20 indirectly, to the insured or any person acting as an agent,
21 representative, attorney, or employee of the owner, lessee, mortgagee,
22 existing, or prospective, of the real property or interest therein which
23 is the subject matter of title insurance or as to which a service is to be
24 performed, any commission or part of its fee or charges, or any other

25 consideration as inducement or compensation for placing any order for
26 a title insurance policy or for performance of any escrow or other
27 service by the insurer, title agency, title agent, or employee, or
28 representative thereof; or

29 (3) Issue any policy or perform any service in connection with
30 which it or any agent has paid or contemplates paying, allowing or
31 giving any commission, rebate, inducement, or other consideration that
32 would violate subdivision (2) of this section.

33 3. A violation of any provision under this section is a level three
34 violation under section 374.049, RSMo.

381.032. 1. Premium rates shall not be excessive, inadequate or
2 unfairly discriminatory. Premium rates are excessive if they are likely
3 to produce a long-run profit that is unreasonably high for the insurance
4 provided or if expenses are unreasonably high in relation to services
5 rendered. Premium rates are inadequate when they are clearly
6 insufficient to sustain projected losses and expenses and the use of such
7 rates, if continued, will tend to create a monopoly in the market.

8 2. Unfair discrimination exists if, after allowing for practical
9 limitations, price differentials fail to reflect equitably the differences in
10 expected losses and expenses. A rate is not unfairly discriminatory
11 because different premiums result for policyholders with like loss
12 exposures but different expenses, or like expenses but different loss
13 exposures, so long as the rate reflects the differences with reasonable
14 accuracy.

15 3. Due consideration shall be given to past and prospective loss
16 and expense experience within and outside of this state, to catastrophe
17 hazards and contingencies, to events or trends within and outside of this
18 state, and to all other relevant factors, including judgment.

19 4. Premium rates may contain a provision for contingencies and
20 an allowance permitting a reasonable profit. In determining the
21 reasonableness of profit, consideration should be given to all investment
22 income attributable to premiums and reserves.

381.033. 1. Every title insurer shall file with the director all
2 premium rates and supplementary rate information which is to be used
3 in this state. Such rates and supplementary rate information and
4 supporting information required by the director shall be filed before the
5 effective date. Upon application by the filer, the director may authorize

6 an earlier effective date.

7 2. Rates filed under this section shall be filed in such form and
8 manner as prescribed by the director. Whenever a filing is not
9 accompanied by such information as the director has required under
10 this section, the director shall so inform the insurer within thirty days.

11 3. All rates, supplementary rate information and any supporting
12 information, not otherwise confidential under section 374.070, RSMo,
13 shall, as soon as filed, be open to public inspection at any reasonable
14 time. Copies may be obtained by any person on request and upon
15 payment of a reasonable charge.

381.034. 1. A rate may be disapproved at any time subsequent to
2 the effective date. The director may disapprove a rate if the director
3 finds that the rate is inadequate, excessive or unfairly discriminatory
4 under section 381.032.

5 2. The insurer whose rates have been disapproved shall be given
6 a hearing upon a written request made within thirty days after the
7 disapproval order.

8 3. Whenever an insurer has no legally effective rates as a result
9 of the director's disapproval of rates or other act, the director shall on
10 request of the insurer specify interim rates for the insurer that are high
11 enough to protect the interests of all parties and may order that a
12 specified portion of the premiums be placed in an escrow account
13 approved by him. When new rates become legally effective, the director
14 shall order the escrowed funds or any overcharge in the interim rates to
15 be distributed appropriately, except that refunds of less than ten dollars
16 per policyholder shall not be required.

381.038. 1. No title insurance policy shall be written unless and
2 until the title insurer, title agent, or agency has:

3 (1) Caused a search of title to be made from the evidence
4 prepared from a title plant of the county where the property is located
5 as herein defined, or if no such title plant of the county exists, or the
6 owner of such plant refuses to furnish the title insurer, title agent, or
7 agency desiring to insure, such title evidence at a reasonable charge and
8 within a reasonable period of time, then such policy of title insurance
9 shall be based upon the best title evidence available. An attorney
10 licensed to practice law in this state may upon personal inspection use
11 the best evidence available in any county and is not subject to the

12 provisions of the title plant requirement of this chapter. The records on
13 which the title plant is based on shall show all prior matters affecting
14 the title to the property or interest therein for a continuous period of
15 time of at least the most recent forty-five years; and

16 (2) Caused to be made a determination of insurability of title in
17 accordance with sound underwriting practices.

18 2. Except when allowed by regulations promulgated by the
19 director, no title insurer, title agent, or agency shall knowingly issue any
20 owner's title insurance policy or commitment to insure without showing
21 all outstanding, enforceable recorded liens or other interests against the
22 title which is to be insured.

23 3. Evidence of the examination of title and determination of
24 insurability generated by a title insurer, title agency, or title agent shall
25 be preserved and maintained by such insurer, agency, or agent for as
26 long as appropriate to the circumstances but in no event less than
27 fifteen years after the title insurance policy has been issued. Instead of
28 retaining the original evidence, the title insurer or title agent or agency
29 may in the regular course of business establish a system whereby all or
30 part of the evidence is recorded, copied, or reproduced by any process
31 that accurately and legibly reproduces or forms a durable medium for
32 reproducing the contents of the original.

33 4. Records relating to escrow and security deposits shall be
34 preserved and retained by a title insurer engaged in direct operations,
35 title agency, and title agent for as long as appropriate to the
36 circumstances but, in no event less than seven years after the escrow or
37 security deposit account has been closed.

38 5. All title insurance policies shall be issued and premiums
39 remitted to the title insurer promptly, but no more than forty-five days,
40 after closing, unless there are special circumstances, as defined by rule,
41 that prevent the issuance of the policy.

42 6. This section shall not apply to a title insurer acting as
43 coinsurer if one of the other coinsurers has complied with this section.

44 7. A violation of any provision under this section is a level two
45 violation under section 374.049, RSMo.

381.042. 1. The director under the authority in section 374.045,
2 RSMo, may issue rules, regulations, and orders necessary to carry out
3 the provisions of this chapter.

4 2. Any rule or portion of a rule, as that term is defined in section
5 536.010, RSMo, that is created under the authority delegated in this
6 section shall become effective only if it complies with and is subject to
7 all of the provisions of chapter 536, RSMo, and, if applicable, section
8 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
9 and if any of the powers vested with the general assembly pursuant to
10 chapter 536, RSMo, to review, to delay the effective date, or to
11 disapprove and annul a rule are subsequently held unconstitutional,
12 then the grant of rulemaking authority and any rule proposed or
13 adopted after August 28, 2006, shall be invalid and void.

 381.045. 1. If the director determines that a person has engaged,
2 is engaging, or is about to engage in a violation of this chapter or a rule
3 adopted or order issued pursuant thereto, or a person has materially
4 aided, is materially aiding, or is about to materially aid an act, practice,
5 omission, or course of business constituting a violation of this act or a
6 rule adopted or order issued pursuant thereto, the director may issue
7 such administrative orders as authorized under section 374.046,
8 RSMo. The director of insurance may also suspend or revoke the license
9 of a producer under section 375.141, RSMo, or the certificate of authority
10 of any title insurer as authorized under section 374.047, RSMo, for any
11 such willful violation.

12 2. If the director believes that a person has engaged, is engaging,
13 or is about to engage in a violation of this chapter or a rule adopted or
14 order issued pursuant thereto, or that a person has materially aided, is
15 materially aiding, or is about to materially aid an act, practice, omission,
16 or course of business constituting a violation of this act or a rule
17 adopted or order issued pursuant thereto, the director may maintain a
18 civil action for relief authorized under section 374.048, RSMo.

19 3. Nothing contained in this section shall affect the right of the
20 director to impose any other penalties provided for in the laws relating
21 to the business of insurance.

22 4. Nothing contained in this chapter is intended to or shall in any
23 other manner limit or restrict the rights of policyholders, claimants, and
24 creditors.

 381.048. 1. The director may bring an action in a court of
2 competent jurisdiction to enjoin violations of the Real Estate Settlement
3 Procedures Act, 12 U.S.C. Section 2607, as amended.

4 2. A violation of any provision under the federal Real Estate
5 Settlement Procedures Act, as amended, is a level two violation under
6 section 374.049, RSMo.

 381.052. No person other than a domestic, foreign, or non-United
2 States title insurer organized on the stock plan and duly licensed by the
3 director shall transact title insurance business as an insurer in this
4 state.

 381.055. Subject to the exceptions and restrictions contained in
2 this chapter, a title insurer shall have the power to:

- 3 (1) Do only title insurance business;
4 (2) Reinsure title insurance policies; and
5 (3) Perform ancillary activities, unless prohibited by the director,
6 including examining titles to property and any interest in property and
7 procuring and furnishing related information and information about
8 relevant real and personal property, when not in contemplation of, or in
9 conjunction with, the issuance of a title insurance policy.

 381.058. 1. No insurer that transacts any class, type, or kind of
2 business other than title insurance shall be eligible for the issuance or
3 renewal of a license to transact the business of title insurance in this
4 state nor shall title insurance be transacted, underwritten, or issued by
5 any insurer transacting or licensed to transact any other class, type, or
6 kind of business.

7 2. A title insurer shall not engage in the business of guaranteeing
8 payment of the principal or the interest of bonds or mortgages.

9 3. (1) Notwithstanding subsection 1 of this section, and to the
10 extent such coverage is lawful within this state, a title insurer is
11 required to issue closing or settlement protection to the buyer, lender,
12 and seller's interest if the title insurer issues a commitment, binder, or
13 title insurance policy. Such closing or settlement protection shall
14 conform to the terms of coverage and form of instrument as required by
15 the director and may indemnify a proposed insured solely against loss
16 of settlement funds only because of the following acts of a title insurer's
17 named title agency or title agent:

18 (a) Theft or other improper acts or omissions with regard to
19 escrow or settlement funds; and

20 (b) Failure to comply with written closing instructions by the
21 proposed insured when agreed to by the title agency or title agent

22 relating to title insurance coverage.

23 (2) The charge for issuance of the closing or settlement protection
24 letter shall be filed as a rate with the director under section 381.032 as
25 a component of the premium. The entire charge for the closing or
26 settlement protection letter shall be retained by the title insurer.

27 (3) A title insurer shall not provide any other coverage which
28 purports to indemnify against improper acts or omissions of a person
29 with regard to escrow, settlement, or closing services.

30 4. As used in subsection 3 of this section, the term "closing or
31 settlement protection letter" means a statement issued by a title
32 insurance company to a party to a real estate transaction acknowledging
33 that the title insurance agency or agent closing a transaction in
34 connection with which the title insurance company's policy is being
35 issued is a duly licensed and authorized agency or agent of the title
36 insurance company, that the performance of settlement services by such
37 agency or agent is within the scope of its authority as agency or agent
38 for the title insurance company, and promising to be responsible for the
39 misapplication of funds or documents by the agency or agent or its
40 failure to follow written instructions in connection with the closing.

 381.062. In order to be licensed to do an insurance business in this
2 state, a title insurer shall establish and maintain a minimum paid-in
3 capital of not less than eight hundred thousand dollars and, in addition,
4 surplus of at least eight hundred thousand dollars.

 381.065. 1. The net retained liability of a title insurer for a single
2 risk in regard to property located in this state, whether assumed
3 directly or as reinsurance, shall not exceed the aggregate of fifty percent
4 of surplus as regards policyholders plus the statutory premium reserve
5 less the company's investment in title plants, all as shown in the most
6 recent annual statement of the insurer on file with the director.

7 2. For purposes of this chapter:

8 (1) A single risk shall be the insured amount of any title insurance
9 policy, except that, where two or more title insurance policies are issued
10 simultaneously covering different estates in the same real property, a
11 single risk shall be the sum of the insured amounts of all the title
12 insurance policies; and

13 (2) A policy under which a claim payment reduces the amount of
14 insurance under one or more other title insurance policies shall be

15 included in computing the single risk sum only to the extent that its
16 amount exceeds the aggregate amount of the policy or policies whose
17 amount of insurance is reduced.

18 3. A title insurer may obtain reinsurance for all or any part of its
19 liability under its title insurance policies or reinsurance agreements and
20 may also reinsure title insurance policies issued by other title insurers
21 on single risks located in this state or elsewhere. Reinsurance on
22 policies issued on properties located in this state may be obtained from
23 any title insurers licensed to transact title insurance business in this
24 state, any other state, or the District of Columbia and which have a
25 combined capital and surplus of at least one million six hundred
26 thousand dollars.

27 4. The director may waive the limitation of this section for a
28 particular risk upon application of the title insurer and for good cause
29 shown.

381.068. In determining the financial condition of a title insurer
2 doing business under this chapter, the general investment provisions of
3 sections 379.080 to 379.082, RSMo, shall apply; except that, an investment
4 in a title plant or plants in an amount equal to the actual cost shall be
5 allowed as an admitted asset for title insurers. The aggregate amount
6 of the investment shall not exceed twenty percent of surplus to
7 policyholders, as shown on the most recent annual statement of the title
8 insurer on file with the director.

381.072. 1. In determining the financial condition of a title
2 insurer doing business under this chapter, the general provisions of the
3 laws regulating the business of insurance requiring the establishment
4 of reserves sufficient to cover all known and unknown liabilities
5 including allocated and unallocated loss adjustment expense, shall
6 apply; except that, a title insurer shall establish and maintain:

7 (1) (a) A known claim reserve in an amount estimated to be
8 sufficient to cover all unpaid losses, claims, and allocated loss
9 adjustment expenses arising under title insurance policies for which the
10 title insurer may be liable, and for which the insurer has discovered or
11 received notice by or on behalf of the insured or escrow or security
12 depositor;

13 (b) Upon receiving notice from or on behalf of the insured of a
14 title defect in or lien or adverse claim against the title of the insured

15 that may result in a loss or cause expense to be incurred in the proper
16 disposition of the claim, the title insurer shall determine the amount to
17 be added to the reserve, which amount shall reflect a careful estimate
18 of the loss or loss expense likely to result by reason of the claim;

19 (c) Reserves required under this section may be revised from time
20 to time and shall be redetermined at least once each year;

21 (2) A statutory or unearned premium reserve established and
22 maintained as follows:

23 (a) A domestic title insurer shall establish and maintain an
24 unearned premium reserve computed in accordance with this section,
25 and all sums attributed to such reserve shall at all times and for all
26 purposes be considered and constitute unearned portions of the original
27 premiums. This reserve shall be reported as a liability of the title
28 insurer in its financial statements;

29 (b) The unearned premium reserve shall be maintained by the
30 title insurer for the protection of holders of title insurance
31 policies. Except as provided in this section, assets equal in value to the
32 reserve are not subject to distribution among creditors or stockholders
33 of the title insurer until all claims of policyholders or claims under
34 reinsurance contracts have been paid in full, and all liability on the
35 policies or reinsurance contracts has been paid in full and discharged
36 or lawfully reinsured;

37 (c) The unearned premium reserve shall consist of:

38 a. The amount of the unearned premium reserve on August 28,
39 2006; and

40 b. A sum equal to fifteen cents for each one thousand dollars of
41 net retained liability under each title insurance policy, excluding
42 mortgagee's policies simultaneously issued with owner's policies or
43 owner's leasehold policies of the same or greater amount, on a single
44 risk written on properties located in this state and issued after August
45 28, 2006;

46 (d) Amounts placed in the unearned premium reserve in any year
47 in accordance with paragraph (c) of this subdivision shall be deducted
48 in determining the net profit of the title insurer for that year;

49 (e) A title insurer shall release from the unearned premium
50 reserve a sum equal to ten percent of the amount added to the reserve
51 during a calendar year on July first of each of the five years following

52 the year in which the sum was added, and shall release from the
53 unearned premium reserve a sum equal to three and one-third percent
54 of the amount added to the reserve during that year on each succeeding
55 July first until the entire amount for that year has been released. The
56 amount of the unearned premium reserve or similar unearned premium
57 reserve maintained before August 28, 2006, shall be released in
58 accordance with the law in effect immediately before August 28, 2006;

59 (f) a. Each domestic and foreign title insurer shall file annually
60 with the audited financial report required under section 375.1032, RSMo,
61 an actuarial certificate made by a member in good standing of the
62 American Academy of Actuaries, or by an actuary permitted to make
63 such certificate by the commissioner, superintendent or director of the
64 department of insurance of the state of incorporation of a foreign title
65 insurer;

66 b. The actuarial certification shall conform to the annual
67 statement instructions for title insurers adopted by the National
68 Association of Insurance Commissioners and shall include the actuary's
69 professional opinion of the insurer's reserves as of the date of the annual
70 statement. The reserves analyzed under this section shall include
71 reserves for known claims, including adverse developments on known
72 claims, and reserves for incurred but not reported claims;

73 (g) Each domestic and foreign title insurer shall establish a
74 supplemental reserve in the amount by which the actuarially certified
75 reserves exceed the total of the known claim reserve and statutory
76 premium reserve as set forth in the title insurer's annual financial
77 report, subject to this subdivision.

78 2. A foreign or alien title insurer licensed to transact title
79 insurance business in this state shall maintain at least the same reserves
80 on title insurance policies issued on properties located in this state as
81 are required of domestic title insurers, unless the laws of the
82 jurisdiction of domicile of the foreign or alien title insurer require a
83 higher amount.

381.075. 1. Sections 375.570 to 375.750, RSMo, and sections
2 375.1150 to 375.1246, RSMo, shall apply to all title insurers subject to this
3 chapter, except as otherwise provided in this section. In applying such
4 sections, the court shall consider the unique aspects of title insurance
5 and shall have broad authority to fashion relief that provides for the

6 maximum protection of the title insurance policyholders.

7 2. Security and escrow funds held by or on behalf of the title
8 insurer shall not become general assets and shall be administered as
9 secured claims as defined in section 375.1152, RSMo.

10 3. Title insurance policies that are in force at the time an order
11 of liquidation is entered shall not be canceled except upon a showing to
12 the court of good cause by the liquidator. The determination of good
13 cause shall be within the discretion of the court. In making this
14 determination, the court shall consider the unique aspects of title
15 insurance and all other relevant circumstances.

16 4. The court may set appropriate dates that potential claimants
17 must file their claims with the liquidator. The court may set different
18 dates for claims based upon the title insurance policy than for all other
19 claims. In setting dates, the court shall consider the unique aspects of
20 title insurance and all other relevant circumstances.

21 5. As of the date of the order of insolvency or liquidation, all
22 premiums paid, due or to become due under policies of the title insurers,
23 shall be fully earned. It shall be the obligation of title agencies, title
24 agents, insureds, or representatives of the title insurer to pay fully
25 earned premium to the liquidator or rehabilitator.

381.076. As a condition of doing business in this state, each title
2 insurer shall be liable for an assessment to pay all unpaid title insurance
3 claims, including claims under section 381.027, on real property in this
4 state for any title insurer which is liquidated with unpaid outstanding
5 claims. The director, as receiver, shall assess all title insurers on a pro
6 rata basis determined by their writings in this state for amounts
7 necessary to pay the claims. A title insurer is not required to pay an
8 amount in excess of one-tenth of its surplus as to policyholders.

381.085. 1. A title insurer shall not deliver or issue for delivery or
2 permit any of its authorized title agencies or title agents to deliver in
3 this state, any form, in connection with title insurance written, unless
4 it has been filed with the director thirty days prior to use.

5 2. Forms covered by this section shall include:

6 (1) Title insurance policies, including standard form
7 endorsements;

8 (2) Title insurance commitments issued prior to the issuance of
9 a title insurance policy; and

10 **(3) Closing or settlement protection letters.**

11 **3. Any term or condition related to an insurance coverage**
12 **provided by an approved title insurance policy or any exception to the**
13 **coverage, except those ascertained from a search and examination of**
14 **records relating to a title or inspection or survey of a property to be**
15 **insured, may only be included in the policy after the term, condition or**
16 **exception has been filed with the director and approved as herein**
17 **provided.**

381.112. For purposes of the premium tax imposed by sections
2 **148.320 and 148.340, RSMo, the premium income received by a title**
3 **insurer shall mean the amount within the definition of "premium"**
4 **contained in section 381.009.**

381.113. 1. A policy issuance fee is imposed on each title insurer
2 **for every title insurance policy issued in the state of Missouri. The**
3 **policy issue fee shall be established by rule by the director and shall be**
4 **based on the department of insurance cost of regulating the title**
5 **insurance industry. However, in no case shall the fee exceed two**
6 **dollars. The policy fee is not a tax and shall be reported and paid**
7 **separately from premium and retaliatory taxes.**

8 **2. All funds received under the provisions of this section shall be**
9 **transmitted by the director of the department of insurance to the**
10 **department of revenue for deposit in the state treasury to the credit of**
11 **the department of insurance dedicated fund established under section**
12 **374.150, RSMo. Expenditures necessitated by this chapter may be paid**
13 **from funds appropriated from the department of insurance dedicated**
14 **fund by the general assembly.**

15 **3. The director may promulgate rules setting forth the standards**
16 **for remittance of the policy fees. Any rule or portion of a rule, as that**
17 **term is defined in section 536.010, RSMo, that is created pursuant to the**
18 **authority delegated in this section shall become effective only if it**
19 **complies with and is subject to all of the provisions of chapter 536,**
20 **RSMo, and, if applicable, section 536.028, RSMo. This section and**
21 **chapter 536, RSMo, are nonseverable and if any of the powers vested**
22 **with the general assembly pursuant to chapter 536, RSMo, to review, to**
23 **delay the effective date, or to disapprove and annul a rule are**
24 **subsequently held unconstitutional, then the grant of rulemaking**
25 **authority and any rule proposed or adopted after August 28, 2006, shall**

26 be invalid and void.

381.115. 1. It is unlawful for any person to act in the capacity of
2 a title agency, unless the person is a licensed business entity producer
3 under subsection 2 of section 375.015, RSMo.

4 2. It is unlawful for any person to act in the capacity of a title
5 agent, unless the person is a licensed individual producer under
6 subsection 1 of section 375.015, RSMo.

7 3. It is unlawful for any title insurer to contract with any person
8 to act in the capacity of a title agency or title agent with respect to risks
9 located in this state unless the person is licensed as required in this
10 section.

11 4. An individual employed by a title insurer, or licensed title
12 agency, or title agent to whom the insurer, agency, or agent delegates
13 authority to act on that agency's or agent's behalf shall be individually
14 licensed as an individual producer under subsection 1 of section 375.015,
15 RSMo, if such employee performs any of the functions defined in
16 subdivision (24) of section 381.009. The director may adopt rules,
17 regulations, and requirements relating to licensing and practices of
18 persons acting in the capacity of title agencies or agents. These persons
19 may include title agencies, title agents, employees of title insurers, title
20 agencies, or title agents, and persons acting on behalf of title insurers,
21 title agencies, or title agents. This subsection is not intended to include
22 persons performing clerical functions.

23 5. Every title agency licensed in this state shall:

24 (1) Exclude or eliminate the word insurer, insurance company, or
25 underwriter from its business name, unless the word agency is also
26 included as part of the name; and

27 (2) Provide, in a timely fashion, each title insurer with which it
28 places business any information the title insurer requests in order to
29 comply with reporting requirements of the director.

30 6. A title agency or title agent licensed in this state prior to the
31 effective date of this chapter shall have ninety days after the effective
32 date of this chapter to comply with the requirements of this section.

33 7. If the title insurer, agency, or title agent delegates the title
34 search to a third party, such as an abstract company, the insurer,
35 agency, or agent must first obtain proof that the third party is operating
36 in compliance with rules and regulations established by the director and

37 the third party shall provide the insurer, agency, or agent with access
38 to and the right to copy all accounts and records maintained by the
39 third party with respect to business placed with the title insurer. Proof
40 from the third party may consist of a signed statement indicating
41 compliance, and shall be effective for a three-year period.

42 8. A violation of any provision under this section is a level three
43 violation under section 374.049, RSMo.

381.118. 1. Each title agency shall designate an individual as a
2 qualified principal, who as a condition of licensure, shall successfully
3 pass an examination developed by the producer advisory board
4 established by section 375.019, RSMo, and approved by the
5 director. Each title agent shall successfully pass an examination
6 developed by the producer advisory board and approved by the
7 director. Upon request by a title agency or agent and for good cause, the
8 director, by order, may waive the requirements of this subsection.

9 2. Each title agent licensed to sell title insurance in this state,
10 unless exempt under subsection 8 of this section, shall successfully
11 complete courses of study as required by this section. Any person
12 licensed to act as a title agent shall, during each two years, attend
13 courses or programs of instruction or attend seminars equivalent to a
14 minimum of sixteen hours of instruction. The initial such two-year
15 period shall begin January first of the year next following the effective
16 date of this chapter.

17 3. Subject to approval by the director, the courses or programs of
18 instruction which shall be deemed to meet the director's standards for
19 continuing educational requirements shall include, but not be limited to,
20 the following:

21 (1) An insurance-related course taught by an accredited college
22 or university or qualified instructor who has taught a course of
23 insurance law at such institution;

24 (2) A course or program of instruction or seminar developed or
25 sponsored by any authorized insurer, recognized agents' association or
26 insurance trade association. A local agents' group may also be approved
27 if the instructor receives no compensation for services;

28 (3) Courses approved for continuing legal education credit by the
29 Missouri Bar.

30 4. A person teaching any approved course of instruction or

31 lecturing at any approved seminar shall qualify for one and one-half
32 times the number of classroom hours as would be granted to a person
33 taking and successfully completing such course, seminar or program, but
34 the credit may be credited no more than once a year.

35 5. Excess classroom hours accumulated during any two-year
36 period may be carried forward to the two-year period immediately
37 following the two-year period in which the course, program, or seminar
38 was held.

39 6. For good cause shown, the director may grant an extension of
40 time during which the educational requirements imposed by this section
41 may be completed, but such extension of time shall not exceed the period
42 of one calendar year. The director may grant an individual waiver of
43 the mandatory continuing education requirement upon a showing by the
44 licensee that it is not feasible for the licensee to satisfy the requirements
45 prior to the renewal date. Waivers may be granted for reasons
46 including, but not limited to:

- 47 (1) Serious physical injury or illness;
48 (2) Active duty in the armed services for an extended period of
49 time;
50 (3) Residence outside the United States; or
51 (4) Licensee is at least seventy years of age and is currently
52 licensed as a title agent.

53 7. Every person subject to the provisions of this section shall
54 furnish in a form satisfactory to the director, written certification as to
55 the courses, programs, or seminars of instruction taken and successfully
56 completed by such person.

57 8. The provisions of this section shall not apply to those natural
58 persons holding or applying for a license to act as a title agent in
59 Missouri who reside in a state that has enacted and implemented a
60 mandatory continuing education law or regulation pertaining to title
61 agents. However, those natural persons holding or applying for a
62 Missouri agent license who reside in states which have no mandatory
63 continuing education law or regulations shall be subject to all the
64 provisions of this section to the same extent as resident Missouri title
65 agents.

66 9. Rules necessary to implement and administer this section shall
67 be promulgated by the director of the department of insurance,

68 including, but not limited to, rules regarding the following:

69 (1) The producer advisory board established by section 375.019,
70 RSMo, shall be utilized by the director to assist the director in
71 determining acceptable content of courses, programs and seminars to
72 include classroom equivalency;

73 (2) Every applicant seeking approval by the director of a
74 continuing education course under this section shall pay to the director
75 a filing fee of fifty dollars per course, except that such total fee shall not
76 exceed two hundred fifty dollars per year for any single applicant. Fees
77 shall be waived for local agents' groups if the instructor receives no
78 compensation for services. Such fee shall accompany any application
79 form required by the director. Courses shall be approved for a period
80 of no more than one year. Applicants holding courses intended to be
81 offered for a longer period must reapply for approval.

82 10. All funds received under the provisions of this section shall be
83 transmitted by the director of the department of insurance to the
84 department of revenue for deposit in the state treasury to the credit of
85 the department of insurance dedicated fund. All expenditures required
86 by this section shall be paid from funds appropriated from the
87 department of insurance dedicated fund by the general assembly.

88 11. When a title agent pays his or her biennial renewal fee, such
89 agent shall also furnish the written certification required by this
90 section.

91 12. Any rule or portion of a rule, as that term is defined in section
92 536.010, RSMo, that is created pursuant to the authority delegated in
93 this section shall become effective only if it complies with and is subject
94 to all of the provisions of chapter 536, RSMo, and, if applicable, section
95 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
96 and if any of the powers vested with the general assembly pursuant to
97 chapter 536, RSMo, to review, to delay the effective date, or to
98 disapprove and annul a rule are subsequently held unconstitutional,
99 then the grant of rulemaking authority and any rule proposed or
100 adopted after August 28, 2006, shall be invalid and void.

 381.122. The director may during normal business hours examine,
2 audit and inspect any and all books and records maintained by a title
3 agency or title agent under this chapter.

 381.125. 1. Whenever the business to be written constitutes

2 affiliated business, prior to commencing the transaction, the title
3 insurer, title agency, or title agent shall ensure that its customer has
4 been provided with disclosure of the existence of the affiliated business
5 arrangement and a written estimate of the charge or range of charges
6 generally made for the title services provided by the title insurer, title
7 agency, or agent.

8 2. The director may establish rules for use by all title agencies in
9 the recording and reporting of the agency's owners and of the agency's
10 ownership interests in other persons or businesses and of material
11 transactions between the parties.

12 3. The director may require each title insurer, agency, and agent
13 to file on forms prescribed by the director reports setting forth the
14 names and addresses of those persons, if any, that have a financial
15 interest in the insurer, agency, or agent and who the insurer, agency, or
16 agent knows or has reason to believe are producers of title insurance
17 business or associates of producers.

18 4. Nothing in this chapter shall be construed as prohibiting
19 affiliated business arrangements in the provision of title insurance
20 business so long as:

21 (1) The title insurer, title agency, title agent, or party making a
22 referral constituting affiliated business, at or prior to the time of the
23 referral, discloses the arrangement and, in connection with the referral,
24 provides the person being referred with a written estimate of the charge
25 or range of charges likely to be assessed and otherwise complies with
26 the disclosure obligations of this section;

27 (2) The person being referred is not required to use a specified
28 title insurer, agency, or agent; and

29 (3) The only thing of value that is received by the title insurer,
30 agency, agent, or party making the referral, other than payments
31 otherwise permitted, is a return on an ownership interest. For purposes
32 of this subsection, the terms "required use" and "return on an ownership
33 interest" shall have the meaning accorded to them under the Real Estate
34 Settlement Procedures Act (RESPA), as amended.

35 5. A violation of any provision under this section is a level two
36 violation under section 374.049, RSMo.

 381.410. As used in this section and section 381.412, the following
2 terms mean:

3 (1) "Cashier's check", a check, however labeled, drawn on the
4 financial institution, which is signed only by an officer or employee of
5 such institution, is a direct obligation of such institution, and is
6 provided to a customer of such institution or acquired from such
7 institution for remittance purposes;

8 (2) "Certified funds", United States currency, funds conveyed by
9 a cashier's check, certified check, teller's check, as defined in Federal
10 Reserve Regulations CC, or wire transfers, including written advice from
11 a financial institution that collected funds have been credited to the
12 settlement agent's account;

13 (3) "Director", the director of the department of insurance, unless
14 the settlement agent's primary regulator is another division in the
15 department of economic development. When the settlement agent is
16 regulated by such division, that division shall have jurisdiction over this
17 section and section 381.412;

18 (4) "Financial institution":

19 (a) A person or entity doing business under the laws of this state
20 or the United States relating to banks, trust companies, savings and loan
21 associations or credit unions; or

22 (b) A mortgage loan company doing business under the laws of
23 this state or the United States which is subject to licensing, supervision,
24 or auditing by the Federal National Mortgage Association, or the Federal
25 Home Loan Mortgage Corporation, or the United States Veterans'
26 Administration, or the Government National Mortgage Association, or
27 the United States Department of Housing and Urban Development, or a
28 successor of any of the foregoing agencies or entities, as an approved
29 seller or servicer, if their principal place of business is in Missouri or a
30 state which is contiguous to Missouri; or

31 (c) A mortgage broker doing business under the laws of this state
32 which is subject to licensing, supervision, or auditing by the Federal
33 National Mortgage Association, or the Federal Home Loan Mortgage
34 Corporation, or the United States Veterans' Administration, or the
35 Government National Mortgage Association, or the United States
36 Department of Housing and Urban Development, or a successor of any
37 of the foregoing agencies or entities, as an approved seller or servicer,
38 if their principal place of business is in Missouri or outside Missouri, but
39 within the St. Louis or Kansas City standard metropolitan statistical

40 area;

41 (5) "Settlement agent", a person, corporation, partnership, or other
42 business organization which accepts funds and documents as fiduciary
43 for the buyer, seller or lender for the purposes of closing a sale of an
44 interest in real estate located within the state of Missouri, and is not a
45 financial institution, or a member in good standing of the Missouri Bar,
46 or a person licensed under chapter 339, RSMo.

381.412. 1. A settlement agent who accepts funds for closing a sale
2 of an interest in real estate shall require a buyer, seller or lender who
3 is not a financial institution to convey such funds to the settlement
4 agent as certified funds. A check:

5 (1) Drawn on an escrow account of a licensed real estate broker,
6 as regulated and described in section 339.105, RSMo;

7 (2) Drawn on an escrow account of a title insurer or title
8 insurance agency licensed to do business in Missouri;

9 (3) Drawn on an agency of the United States of America, the state
10 of Missouri, or any county or municipality of the state of Missouri; or

11 (4) Drawn on an account by a financial institution;
12 shall be exempt from the provisions of this section.

13 2. It is unlawful for any title insurer, title agency, or title agent,
14 as defined in section 381.009, to make any payment, disbursement or
15 withdrawal from an escrow account which it maintains as a depository
16 of funds received from the public for the settlement of real estate
17 transactions unless a corresponding deposit of funds was made to the
18 escrow account for the benefit of the payee or payees:

19 (1) At least ten days prior to such payment, disbursement, or
20 withdrawal;

21 (2) Which consisted of certified funds; or

22 (3) Consisted of a check made exempt from this section by the
23 provisions of subsection 1 of this section.

24 3. A violation of any provision of this section is a level two
25 violation under section 374.049, RSMo.

[381.003. 1. Sections 381.003 to 381.125 shall be known
2 and may be cited as the "Missouri Title Insurance Act".

3 2. Sections 381.009 to 381.048 shall apply to all persons
4 engaged in the business of title insurance in this state. Sections
5 381.052 to 381.112 shall apply to all title insurers engaged in the

6 business of title insurance in this state. Sections 381.115 to
7 381.125 shall apply to all title agencies engaged in the business of
8 title insurance in this state.

9 3. Except as otherwise expressly provided in this chapter
10 and except where the context otherwise requires, all provisions of
11 the insurance code applying to insurance and insurance companies
12 generally shall apply to title insurance, title insurers and title
13 agents.]

[381.009. As used in this chapter, the following terms mean:

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(1) "Abstract of title" or "abstract", a written history,
synopsis or summary of the recorded instruments affecting the title
to real property;

(2) "Affiliate", a specific person that directly, or indirectly
through one or more intermediaries, controls, or is controlled by, or
is under common control with, the person specified;

(3) "Affiliated business", any portion of a title insurance
agency's business written in this state that was referred to it by a
producer of title insurance business or by an associate of the
producer, where the producer or associate, or both, have a financial
interest in the title agency;

(4) "Associate", any:

(a) Business organized for profit in which a producer of title
business is a director, officer, partner, employee or an owner of a
financial interest;

(b) Employee of a producer of title business;

(c) Franchisor or franchisee of a producer of title business;

(d) Spouse, parent or child of a producer of title insurance
business who is a natural person;

(e) Person, other than a natural person, that controls, is
controlled by, or is under common control with, a producer of title
business;

(f) Person with whom a producer of title insurance business
or any associate of the producer has an agreement, arrangement or
understanding, or pursues a course of conduct, the purpose or effect
of which is to provide financial benefits to that producer or
associate for the referral of business;

(5) "Bona fide employee of the title insurer", an individual who devotes substantially all of his or her time to performing services on behalf of a title insurer and whose compensation for those services is in the form of salary or its equivalent paid by the title insurer;

(6) "Control", including the terms "controlling", "controlled by" and "under common control with", the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by showing that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(7) "County" or "counties" includes any city not within a county;

(8) "Direct operations", that portion of a title insurer's operations which are attributable to business written by a bona fide employee;

(9) "Director", the director of the department of insurance, or the director's representatives;

(10) "Escrow", written instruments, money or other items deposited by one party with a depository, escrow agent or escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(11) "Escrow, settlement or closing fee", the consideration for supervising or handling the actual execution, delivery or recording of transfer and lien documents and for disbursing funds;

(12) "Financial interest", a direct or indirect legal or beneficial interest, where the holder is or will be entitled to five

67 percent or more of the net profits or net worth of the entity in
68 which the interest is held;

69 (13) "Foreign title insurer", any title insurer incorporated
70 or organized pursuant to the laws of any other state of the United
71 States, the District of Columbia, or any other jurisdiction of the
72 United States;

73 (14) "Geographically indexed or retrievable", a system of
74 keeping recorded documents which includes as a component a
75 method for discovery of the documents by:

76 (a) Searching an index arranged according to the
77 description of the affected land; or

78 (b) An electronic search by description of the affected land;

79 (15) "Net retained liability", the total liability retained by
80 a title insurer for a single risk, after taking into account any ceded
81 liability and collateral, acceptable to the director, and maintained
82 by the insurer;

83 (16) "Non-United States title insurer", any title insurer
84 incorporated or organized pursuant to the laws of any foreign
85 nation or any province or territory;

86 (17) "Premium", the consideration paid by or on behalf of
87 the insured for the issuance of a title insurance policy or any
88 endorsement or special coverage. It does not include consideration
89 paid for settlement or escrow services or noninsurance-related
90 information services;

91 (18) "Producer", any person, including any officer, director
92 or owner of five percent or more of the equity or capital of any
93 person, engaged in this state in the trade, business, occupation or
94 profession of:

95 (a) Buying or selling interests in real property;

96 (b) Making loans secured by interests in real property; or

97 (c) Acting as broker, agent, representative or attorney of a
98 person who buys or sells any interest in real property or who lends
99 or borrows money with the interest as security;

100 (19) "Qualified depository institution", an institution that
101 is:

102 (a) Organized or, in the case of a United States branch or
103 agency office of a foreign banking organization, licensed pursuant

104 to the laws of the United States or any state and has been granted
105 authority to operate with fiduciary powers;

106 (b) Regulated, supervised and examined by federal or state
107 authorities having regulatory authority over banks and trust
108 companies;

109 (c) Insured by the appropriate federal entity; and

110 (d) Qualified under any additional rules established by the
111 director;

112 (20) "Referral", the directing or the exercising of any power
113 or influence over the direction of title insurance business, whether
114 or not the consent or approval of any other person is sought or
115 obtained with respect to the referral;

116 (21) "Search", "search of the public records" or "search of
117 title", a search of those records established by the laws of this state
118 for the purpose of imparting constructive notice of matters relating
119 to real property to purchasers for value and without knowledge;

120 (22) "Security" or "security deposit", funds or other property
121 received by the title insurer as collateral to secure an indemnitor's
122 obligation under an indemnity agreement pursuant to which the
123 insurer is granted a perfected security interest in the collateral in
124 exchange for agreeing to provide coverage in a title insurance policy
125 for a specific title exception to coverage;

126 (23) "Subsidiary", an affiliate controlled by a person directly
127 or indirectly through one or more intermediaries;

128 (24) "Title agency" means an authorized person who issues
129 title insurance on behalf of a title insurer. An attorney licensed to
130 practice law in this state who issues title insurance as a part of his
131 or her law practice, but does not maintain or operate a title
132 insurance business separate from such law practice is not a title
133 agency;

134 (25) "Title agent" or "agent", an attorney licensed to
135 practice law in this state who issues title insurance as part of his
136 or her law practice, but who is not affiliated with or acting on
137 behalf of a title agency, or an authorized person who, on behalf of
138 a title agency or on behalf of a title agent not affiliated with a title
139 agency, performs one or more of the following acts in conjunction
140 with the issuance of a title insurance commitment or policy;

- 141 (a) Determines insurability, based upon a review of a search
142 of title;
- 143 (b) Performs searches;
- 144 (c) Handles escrows, settlements or closings; or
- 145 (d) Solicits or negotiates title insurance business;
- 146 (26) "Title insurance business" or "business of title
147 insurance":
- 148 (a) Issuing as insurer or offering to issue as insurer a title
149 insurance policy;
- 150 (b) Transacting or proposing to transact by a title insurer
151 any of the following activities when conducted or performed in
152 contemplation of and in conjunction with the issuance of a title
153 insurance policy:
- 154 a. Soliciting or negotiating the issuance of a title insurance
155 policy;
- 156 b. Guaranteeing, warranting or otherwise insuring the
157 correctness of title searches for all instruments affecting titles to
158 real property, any interest in real property, cooperative units and
159 proprietary leases and for all liens or charges affecting the same;
- 160 c. Handling of escrows, settlements or closings;
- 161 d. Executing title insurance policies;
- 162 e. Effecting contracts of reinsurance; or
- 163 f. Abstracting, searching or examining titles;
- 164 (c) Guaranteeing, warranting or insuring searches or
165 examinations of title to real property or any interest in real
166 property;
- 167 (d) Guaranteeing or warranting the status of title as to
168 ownership of or liens on real property by any person other than the
169 principals to the transaction;
- 170 (e) Promising to purchase or repurchase for consideration
171 an indebtedness because of a title defect, whether or not involving
172 a transfer of risk to a third person; or
- 173 (f) Promising to indemnify the holder of a mortgage or deed
174 of trust against loss from the failure of the borrower to pay the
175 mortgage or deed of trust when due if the property fails to yield
176 sufficient proceeds upon foreclosure to satisfy the debt, when one
177 or both of the following conditions exist:

178 a. The security has been impaired by the discovery of a
179 previously unknown property interest in favor of one who is not
180 liable for the payment of the mortgage or deed of trust; or

181 b. Perfection of the position of the mortgage or deed of trust
182 which was assured to exist cannot be obtained, notwithstanding
183 timely recordation with the recorder of deeds of the county in which
184 the property is located; or

185 (g) Doing or proposing to do any business substantially
186 equivalent to any of the activities listed in this subdivision in a
187 manner designed to evade the provisions of this chapter;

188 (27) "Title insurance commitment" or "commitment", a
189 preliminary report, commitment or binder issued prior to the
190 issuance of a title insurance policy containing the terms, conditions,
191 exceptions and other matters incorporated by reference under
192 which the title insurer is willing to issue its title insurance policyA
193 title insurance commitment is not an abstract of title;

194 (28) "Title insurance policy" or "policy", a contract insuring
195 or indemnifying owners of, or other persons lawfully interested in,
196 real property or any interest in real property, against loss or
197 damage arising from any or all of the following conditions existing
198 on or before the policy date and not excepted or excluded:

199 (a) Title to the estate or interest in land being otherwise
200 than as stated in the policy;

201 (b) Defects in or liens or encumbrances on the insured title;

202 (c) Unmarketability of the insured title;

203 (d) Lack of legal right of access to the land;

204 (e) Invalidity or unenforceability of the lien of an insured
205 mortgage;

206 (f) The priority of a lien or encumbrance over the lien of any
207 insured mortgage;

208 (g) The lack of priority of the lien of an insured mortgage
209 over a statutory lien for services, labor or material;

210 (h) The invalidity or unenforceability of an assignment of
211 the insured mortgage; or

212 (i) Rights or claims relating to the use of or title to the
213 land;

214 (29) "Title insurer" or "insurer", a company organized

215 pursuant to laws of this state for the purpose of transacting the
216 business of title insurance and any foreign or non-United States
217 title insurer licensed in this state to transact the business of title
218 insurance;

219 (30) "Title plant", a set of records encompassing at least the
220 most recent forty-five years, consisting of documents, maps, surveys
221 or entries affecting title to real property or any interest in or
222 encumbrance on the property, which have been filed or recorded in
223 the jurisdiction for which the title plant is established or
224 maintained. The records in the title plant shall be geographically
225 indexed or retrievable as to those records containing a legal
226 description of affected land, and otherwise by name of affected
227 person;

228 (31) "Underwrite", the authority to accept or reject risk on
229 behalf of the title insurer.]

[381.011. 1. Sections 381.011 to 381.241 shall be known
2 and may be cited as the "Missouri Title Insurance Act".

3 2. The purpose of sections 381.011 to 381.241 is to provide
4 the state of Missouri with a comprehensive body of law for the
5 effective regulation and supervision of title insurance business
6 transacted within this state in response to the McCarran-Ferguson
7 Act, Sections 1011-1015, Title 15, United States Code.]

[381.015. 1. When a title insurance commitment issued by
2 a title insurer, title agency or title agent includes an offer to issue
3 an owner's policy covering the resale of owner-occupied residential
4 property, the commitment shall incorporate the following statement
5 in bold type:

6 "Please read the exceptions and the terms shown or referred
7 to herein carefully. The exceptions are meant to provide you with
8 notice of matters which are not covered under the terms of the title
9 insurance policy and should be carefully considered."

10 2. A title insurer, title agency or title agent issuing a
11 lender's title insurance policy in conjunction with a mortgage loan
12 made simultaneously with the purchase of all or part of the real
13 estate securing the loan, where no owner's title insurance policy
14 has been requested, shall give written notice, on a form prescribed
15 or approved by the director, to the purchaser-mortgagor at the time

the commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage-lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title policy insures against and what possible exposures exist for the purchaser- mortgagor that could be insured against through the purchase of an owner's policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost, if the proposed coverages are or amount of insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least fifteen years after the effective date of the policy.

3. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.]

[381.018. 1. The title insurer shall not allow the issuance of its commitments or policies by a title agency or title agent not affiliated with a title agency unless there is in force a written contract between the parties which sets forth the responsibilities of each party or, where both parties share responsibility for particular functions, specifies the division of responsibilities.

2. For each title agency or title agent not affiliated with a title agency under contract with the insurer, the title insurer shall have on file a statement of financial condition, of each title agency or title agent as of the end of the previous calendar or fiscal year setting forth an income statement of business done during the preceding year and a balance sheet showing the condition of its affairs as of the close of the prior year, certified by the agency or agent as being a true and accurate representation of the agency's or agent's financial condition. The statement shall be filed with the insurer no later than the date the agency's or agent's federal income tax return for the same year is filed. Attorneys actively engaged in the practice of law, in addition to that related to title insurance business, are exempt from the requirements of this subsection.

21 3. The title insurer shall conduct reviews of the
22 underwriting, claims and escrow practices of its agencies and
23 agents which shall include a review of the agency's or agent's policy
24 blank inventory and processing operations. If any such title agency
25 or title agent does not maintain separate bank or trust accounts for
26 each title insurer it represents, the title insurer shall verify that
27 the funds held on its behalf are reasonably ascertainable from the
28 books of account and records of the title agency or title agent not
29 affiliated with a title agency. The title insurer shall conduct a
30 review of each of its agencies and agents at least triennially
31 commencing January first of the year first following January 1,
32 2001.

33 4. Within thirty days of executing or terminating a contract
34 with a title agency or title agent not affiliated with a title agency,
35 the insurer shall provide notification of the appointment or
36 termination and the reason for termination to the director. Notices
37 of appointment of a title agency or title agent shall be made on a
38 form promulgated by the director.

39 5. The title insurer shall maintain an inventory of all policy
40 numbers allocated to each title agency or title agent not affiliated
41 with a title agency.

42 6. The title insurer shall have on file proof that the title
43 agency or title agent is licensed by this state.

44 7. The title insurer shall establish the underwriting
45 guidelines and, where applicable, limitations on title claims
46 settlement authority to be incorporated into contracts with its title
47 agencies and title agents not affiliated with a title agency.

48 8. Each violation of any provision of this section is a class
49 B violation as that term is defined in section 381.045.]

 [381.021. 1. Sections 381.011 to 381.241 shall apply to all
2 persons engaged in the business of title insurance in this state.

3 2. Except as otherwise expressly provided in sections
4 381.011 to 381.241, and except where the context otherwise
5 requires, all provisions of the insurance laws of this state applying
6 to insurance and insurance companies generally shall apply to title
7 insurance and title insurance companies. No law of this state
8 enacted after September 28, 1987, that is inconsistent with the

provisions of such sections shall be applicable to the business of title insurance unless such law specifically states that it is to be applicable to the business of title insurance.

3. Nothing in sections 381.011 to 381.241 shall be construed to authorize the practice of law by any person who is not duly admitted to practice law in this state nor shall it be construed to authorize the director to regulate the practice of law or the sale of real estate.]

[381.022. 1. A title insurer, title agency or title agent not affiliated with a title agency may operate as an escrow, security, settlement or closing agent, provided that:

(1) All funds deposited with the title insurer, title agency or title agent not affiliated with a title agency in connection with any escrow, settlement, closing or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified depository institution no later than the close of the next business day after receipt, in accordance with the following requirements:

(a) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit or closing in the records of the title insurer, title agency or title agent not affiliated with a title agency, in a manner that permits the funds to be identified on an individual basis and in accordance with the terms of the individual instructions or agreements under which the funds were accepted; and

(b) The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted;

(2) Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying under what conditions and to whom such funds may be disbursed or pursuant to an order of a court of competent jurisdiction;

(3) Funds held in a security deposit account shall be disbursed only pursuant to a written agreement specifying:

(a) What actions the indemnitor shall take to satisfy his or

30 her obligation under the agreement;

31 (b) The duties of the title insurer, title agency or title agent
32 not affiliated with a title agency with respect to disposition of the
33 funds held, including a requirement to maintain evidence of the
34 disposition of the title exception before any balance may be paid
35 over to the depositing party or his or her designee; and

36 (c) Any other provisions the director may require;

37 (4) Any interest received on funds deposited in connection
38 with any escrow, settlement, security deposit or closing may be
39 retained by the title insurer, title agency or title agent not
40 affiliated with a title agency as compensation for administration of
41 the escrow or security deposit, unless the instructions for the funds
42 or a governing statute provides otherwise;

43 (5) Each violation of this subsection is a class A violation as
44 that term is defined in section 381.045.

45 2. The title agency or title agent not affiliated with an
46 agency shall cooperate with its underwriters in the conduct by the
47 underwriters of reviews of the agency's or agent's escrow,
48 settlement, closing and security deposit accounts. The title insurer
49 shall provide a copy of the report of each such review it performs
50 to the director. The director may promulgate rules setting forth
51 the minimum threshold level at which a review would be required,
52 the standards thereof and the form of report required.

53 3. If the title agency or title agent not affiliated with an
54 agency is appointed by two or more title insurers and maintains
55 fiduciary trust accounts in connection with providing escrow or
56 closing settlement services, the title agency or title agent shall
57 allow each title insurer reasonable access to the accounts and any
58 or all of the supporting account information in order to ascertain
59 the safety and security of the funds held by the title agency or title
60 agent.

61 4. (1) Nothing in this chapter shall be deemed to prohibit
62 the recording of documents prior to the time funds are available for
63 disbursement with respect to a transaction in which a title insurer,
64 title agency or title agent not affiliated with a title agency is the
65 settlement agent, provided all parties to whom payment will
66 become due upon such recording consent thereto in writing.

67 (2) The settlement agent shall record all deeds and security
68 instruments for real estate closings handled by it within three
69 business days after completion of all conditions precedent thereto.

70 (3) Each violation of this subsection is a class C violation as
71 that term is defined in section 381.045.]

 [381.025. 1. A title insurer, title agency, title agent or
2 other person shall not give or receive, directly or indirectly, any
3 consideration for the referral of title insurance business or escrow
4 or other service provided by a title insurer, title agency or title
5 agent. Each violation of this subsection is a class A violation as
6 that term is defined in section 381.045.]

7 2. Any title insurer, title agency or title agent doing
8 business in the same county as a title insurer, title agency or title
9 agent who may be in violation of the prohibitions or limitations of
10 this section shall have standing to seek injunctive relief against the
11 violating title insurer, title agency or title agent in the event the
12 department declines or fails to enforce this section within forty-five
13 days following receipt of written notice of such violation. In any
14 action pursuant to this subsection, the court may award to the
15 successful party the court costs of the action together with
16 reasonable attorney fees.]

 [381.028. No title insurer, title agency or title agent shall
2 participate in any transaction in which it knows that a producer or
3 other person requires, directly or indirectly, or through any trustee,
4 director, officer, agent, employee or affiliate, as a condition,
5 agreement or understanding to selling or furnishing any other
6 person a loan, or loan extension, credit, sale, property, contract,
7 lease or service, that the other person shall place a title insurance
8 policy of any kind with the title insurer or through a particular
9 title agency or agent. Each violation of this section is a class A
10 violation as that term is defined in section 381.045.]

 [381.031. As used in sections 381.011 to 381.241, the
2 following terms mean:

3 (1) "Alien title insurer", any title insurer incorporated or
4 organized under the laws of any foreign nation or any province or
5 territory thereof;

6 (2) "Applicant", a person, whether or not a prospective

7 insured, who applies to a title insurer or title agent, or agency for
8 a title insurance policy and who, at the time of the application, is
9 not a title agent or agency;

10 (3) "Approved attorney", an attorney at law who is not an
11 agent or employee of a title insurer, and whose certification as to status of title a title insurer is willing to
12 accept as the basis for issuance of its title insurance policy;

13 (4) "Charge", any fee billed by a title agent, agency, or title
14 insurer for the performance of services other than fees that fall
15 within the definition of premium in this section. "Charge" includes,
16 but is not limited to, fees for document preparation, fees for the
17 handling of escrows, settlements, or closing, and fees for services
18 commenced but not completed. "Charge" does not include fees
19 collected by a title insurer, title agency, or title agent in an escrow,
20 settlement or closing when the fees are limited to the amount billed
21 for services rendered by an entity independent of the title insurer,
22 title agent, or agency;

23 (5) "Controlled business", any portion of a title insurer's,
24 title agency's or title agent's business of title insurance in this
25 state, referred to it by any producer of title business or by any
26 associate of such producer, where the producer of title business, the
27 associate, or both, have a financial interest in the title insurer, title
28 agency, or title agent to which business is referred;

29 (6) "Director", the director of the department of insurance;

30 (7) "Domestic title insurer", a title insurer organized under
31 the laws of this state;

32 (8) "Escrow, settlement or closing fee", the consideration for
33 supervising the actual execution, delivery or recording of transfer
34 and lien documents and for disbursing funds;

35 (9) "Financial interest", any interest, legal or beneficial,
36 that entitles the holder directly or indirectly to one percent or more
37 of the net profits or net worth of the entity in which the interest is
38 held, but does not include payments of principal or interest made
39 to a mortgage holder of the title agency;

40 (10) "Foreign title insurer", any title insurer organized
41 under the laws of any other state of the United States, the District
42 of Columbia, or any other jurisdiction of the United States;

43 (11) "Gross operating revenue", all amounts received by a

title insurer, title agency, or title agent from premiums and charges;

(12) "Net retained liability", the total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded reinsured liability, if any;

(13) "Person", any natural person, partnership, association, cooperative, corporation, trust, or other legal entity;

(14) "Premium", risk rates charged to the insured;

(15) "Producer of title business" or "producer", any person, including any officer, director, or owner of five percent or more of the equity or capital of any person, engaged in this state in the trade, business, occupation or profession of:

(a) Buying or selling interests in real property;

(b) Making loans secured by interests in real property; or

(c) Acting as broker, agent, representative or attorney of a person who buys or sells any interest in real property or who lends or borrows money with such interest as security;

(16) "Single risk", the insured amount of any title insurance policy, except that where two or more title insurance policies are issued simultaneously covering different estates in the same real property, "single risk" means the sum of the insured amounts of all such title insurance policies. Any title insurance policy insuring a mortgage interest, a payment under which reduces the insured amount of a fee or leasehold title insurance policy, shall be excluded in computing the amount of a single risk to the extent that the insured amount of the mortgagee title insurance policy does not exceed the insured amount of the fee or leasehold title insurance policy;

(17) "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:

(a) Approved attorneys;

(b) Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:

- 81 a. Establish premiums for policies of title insurance;
- 82 b. Determine insurability; or
- 83 c. Issue commitments, policies or other contracts of title
- 84 insurance;

85 (18) "Title insurance agency" or "agency", any individual

86 transacting or doing business under any name other than his true

87 name, any partnership, unincorporated association or corporation,

88 transacting or doing business with the public or title insurance

89 companies as a title insurance agent;

90 (19) "Title insurance business" or "business of title

91 insurance" means:

92 (a) Issuing as insurer or offering to issue as insurer a title

93 insurance policy;

94 (b) Transacting or proposing to transact by a title insurer,

95 title agency, or title agent any of the following activities when

96 conducted or performed by a title agent, title agency, or title

97 insurer in conjunction with the issuance of its title insurance:

98 a. Soliciting or negotiating the issuance of a title insurance

99 policy;

100 b. Guaranteeing, warranting, or otherwise insuring the

101 correctness of title searches;

102 c. Handling of escrows, settlements, or closings;

103 d. Execution of title insurance policies, reports,

104 commitments, binders, and endorsements;

105 e. Effecting contracts of reinsurance; or

106 f. Abstracting, searching, or examining titles;

107 (c) Transacting by a title insurer, title agent, or agency of

108 matters subsequent to the issuance of a title insurance policy and

109 arising out of it; or

110 (d) Doing or proposing to do any business in substance

111 equivalent to any of the foregoing in order to evade any provision

112 of this act;

113 (20) "Title insurance policy" or "policy", a contract insuring

114 or indemnifying against loss or damage arising from any or all of

115 the following:

116 (a) Defects in or liens or encumbrances on the insured title;

117 (b) Unmarketability of the insured title; or

118 (c) Invalidity or unenforceability of liens or encumbrances
119 on the stated property.

120 "Title insurance policy" does not include a preliminary report,
121 binder, commitment, or abstract;

122 (21) "Title insurer", a company organized under laws of this
123 state for the purpose of transacting as insurer the business of title
124 insurance and any foreign or alien title insurer engaged in this
125 state in the business of title insurance as insurer;

126 (22) "Title plant", an index of the records of a county which
127 imparts constructive notice to purchasers of real property, which
128 encompasses at least the most recent forty-five years. The index
129 shall be kept geographically as to those records containing a legal
130 description of affected land, and otherwise by name of affected
131 person.]

[381.032. 1. No title insurer, may charge any rates
2 regulated by the state after January 1, 2001, except in accordance
3 with the premium rate schedule and manual filed with and
4 approved by the director in accordance with applicable statutes and
5 regulations governing rate filings. Premium rate schedules in
6 effect prior to January 1, 2001, may be used until new rate
7 schedules have been approved by the director. Title insurers shall
8 file their premium rate schedules within thirty days after January
9 1, 2001. Each violation of this subsection is a class C violation as
10 that term is defined in section 381.045. Nothing in this section
11 shall prevent an agent not affiliated with an agency from charging
12 for services that constitute the practice of law at the customary fee
13 charged by such person for legal services. To the extent the
14 premium fails to compensate the agent at such rate, the agent may
15 render an additional bill for such services on behalf of the agent's
16 law practice or law firm. The acceptance of any part of the
17 premium by the law firm of said agent shall not be a violation of
18 any provision of the Missouri title insurance act or the general
19 insurance statutes, regulations or bulletins regarding payment of
20 commissions to nonlicensed entities.

21 2. The director may establish rules, including rules
22 providing statistical plans, for use by all title insurers, title
23 agencies and title agents in the recording and reporting of revenue,

24 loss and expense experience in such form and detail as is necessary
25 to aid the director in the establishment of rates and fees.

26 3. The director may require that the information provided
27 pursuant to this section be verified by oath of the insurer's or
28 agency's president or vice president or secretary or actuary, as
29 applicable. The director may further require that the information
30 required pursuant to this section be subject to an audit conducted
31 at the expense of the title insurer or title agency by an independent
32 certified public accountant. The director shall have the authority
33 to establish a minimum threshold level at which an audit would be
34 required.

35 4. Information filed with the director relating to the
36 experience of a particular agency shall be kept confidential unless
37 the director finds it in the public interest to disclose the
38 information required of title insurers or title agencies pursuant to
39 this section. Prior to any such disclosure of confidential
40 information, the director shall provide notice and opportunity to be
41 heard to the title insurers and title agencies who would be affected
42 thereby.]

[381.035. No title insurance company, title agency or title
2 agent shall willfully withhold information from, or knowingly give
3 false or misleading information to the director, or to any title
4 insurance rating organization, of which the title insurance company
5 is a member or subscriber, which will affect the rates or fees
6 chargeable pursuant to this chapter. Each violation of this section
7 is a class A violation as that term is defined in section 381.045.]

[381.038. 1. Evidence of the examination of title and
2 determination of insurability generated by a title insurer engaged
3 in direct operations, title agency or title agent shall be preserved
4 and maintained by such insurer, agency or agent for as long as
5 appropriate to the circumstances but in no event less than fifteen
6 years after the title insurance policy has been issued.

7 2. Records relating to escrow and security deposits shall be
8 preserved and retained by a title insurer engaged in direct
9 operations, title agency and title agent for as long as appropriate
10 to the circumstances but in no event less than five years after the
11 escrow or security deposit account has been closed.

12 3. This section shall not apply to a title insurer acting as
13 coinsurer if one of the other coinsurers has complied with this
14 section.

15 4. Each violation of any provision of this section is a class
16 C violation as that term is defined in section 381.045.]

 [381.041. 1. No person other than a domestic, foreign, or
2 alien title insurer organized on the stock plan and duly licensed by
3 the director shall transact title insurance business as an insurer in
4 this state.

5 2. Each title insurer may engage in the title insurance
6 business in this state if licensed to do so by the director and
7 provide any other service related or incidental to the sale and
8 transfer or financing of property.

9 3. A title insurer shall maintain a minimum paid-in capital
10 of not less than four hundred thousand dollars and, in addition,
11 paid-in initial surplus of at least four hundred thousand dollars.]

 [381.042. 1. The director may issue rules, regulations and
2 orders necessary to carry out the provisions of this chapter.

3 2. No rule or portion of a rule promulgated pursuant to the
4 authority of this chapter shall become effective unless it has been
5 promulgated pursuant to the provisions of chapter 536, RSMo.]

 [381.045. 1. If the director determines that the title insurer
2 or any other person has violated this chapter, or any regulation or
3 order promulgated thereunder, after notice and opportunity to be
4 heard, the director may order:

5 (1) For each violation a monetary penalty which shall take
6 into account the harm the violation caused or could have caused or
7 potential harm to the public and which shall not exceed:

8 (a) One thousand dollars per violation for a class A
9 violation;

10 (b) Five hundred dollars per violation for a class B
11 violation; and

12 (c) One hundred dollars per violation for a class C violation;

13 (2) Revocation or suspension of the title insurer's license;

14 or

15 (3) Both monetary penalty and revocation or suspension.

16 2. Nothing contained in this section shall affect the right of

17 the director to impose any other penalties provided for in the
18 insurance code.

19 3. Nothing contained in this chapter is intended to or shall
20 in any other manner limit or restrict the rights of policyholders,
21 claimants and creditors.]

2 [381.048. The director may bring an action in a court of
3 competent jurisdiction to enjoin violations of the Real Estate
4 Settlement Procedures Act, 12 U.S.C. Section 2607, as amended.]

5 [381.051. 1. A title insurer, before issuing any title
6 insurance policy covering property located in this state, shall
7 deposit with the director of the department of insurance,
8 hereinafter referred to as the director, a sum of four hundred
9 thousand dollars, which shall be held for the security and
10 protection of the holders or beneficiaries under its title insurance
11 policies.

12 2. Assets deposited pursuant to this section may, with the
13 approval of the director, be exchanged from time to time for other
14 assets that qualify under subsection 3 of this section.

15 3. The depositing title insurer shall receive the income,
16 interests, and dividends on any assets deposited. The deposit
17 required under this section may be made in legal tender or in
18 investments now or hereafter permitted to domestic life insurers
19 with regard to their capital, reserve and surplus. For capital and
20 reserve deposits, sums deposited pursuant to this section shall be
21 valued at their market value.

22 4. A title insurer that has deposited assets pursuant to this
23 section may, with the approval of the director, withdraw any part
24 of the assets so deposited. If any such title insurer continues to
25 engage in the business of title insurance, it shall not be permitted
26 to withdraw assets that would reduce the amount of its deposits
27 below the amount required by subsection 1 of this section.

28 5. In lieu of such a deposit maintained in this state, the
29 director shall accept a certificate or certificates in proper form of
the public officer or officers having general supervision of title
insurers in its state of domicile to the effect that a deposit or total
deposits, in an equal or greater amount, in classes of investment
authorized in such state, are being maintained for like purposes in

30 public custody or control pursuant to the laws of such state on
31 behalf of the title insurer.

32 6. If sections 381.011 to 381.241 require a greater amount
33 of capital and surplus or deposits than that required of a title
34 insurer prior to September 28, 1987, such title insurer shall have
35 three years after September 28, 1987, to comply with any such
36 increased requirement.

37 7. The provisions of sections 375.950 to 375.990, RSMo,
38 shall apply to the impairment of capital, liquidation, and
39 rehabilitation of title insurers.]

2 [381.052. No person other than a domestic, foreign or
3 non-United States title insurer organized on the stock plan and
4 duly licensed by the director shall transact title insurance business
as an insurer in this state.]

2 [381.055. Subject to the exceptions and restrictions
contained in this chapter, a title insurer shall have the power to:

- 3 (1) Do only title insurance business;
- 4 (2) Reinsure title insurance policies; and
- 5 (3) Perform ancillary activities, unless prohibited by the
- 6 director, including examining titles to real property and any
- 7 interest in real property and procuring and furnishing related
- 8 information and information about relevant personal property,
- 9 when not in contemplation of, or in conjunction with, the issuance
- 10 of a title insurance policy.]

2 [381.058. 1. No insurer that transacts any class, type or
3 kind of business other than title insurance shall be eligible for the
4 issuance or renewal of a license to transact the business of title
5 insurance in this state nor shall title insurance be transacted,
6 underwritten or issued by any insurer transacting or licensed to
transact any other class, type or kind of business.

7 2. A title insurer shall not engage in the business of
8 guaranteeing payment of the principal or the interest of bonds or
9 mortgages.

10 3. (1) Notwithstanding subsection 1 of this section, and to
11 the extent such coverage is lawful within this state, a title insurer
12 is expressly authorized to issue closing or settlement protection to
13 a proposed insured upon request if the title insurer issues a

14 commitment, binder or title insurance policy. Such closing or
15 settlement protection shall conform to the terms of coverage and
16 form of instrument as required by the director and may indemnify
17 a proposed insured solely against loss of settlement funds only
18 because of the following acts of a title insurer's named title agency
19 or title agent:

20 (a) Theft of settlement funds; and

21 (b) Failure to comply with written closing instructions by
22 the proposed insured when agreed to by the title agency or title
23 agent relating to title insurance coverage.

24 (2) The director may promulgate or approve a required
25 charge for providing the coverage.

26 (3) A title insurer shall not provide any other coverage
27 which purports to indemnify against improper acts or omissions of
28 a person with regard to escrow, settlement, or closing services.]

[381.061. 1. The net retained liability of a title insurer for
2 a single risk on property located in this state, whether assumed
3 directly or as reinsurance, may not exceed fifty percent of the sum
4 of its total surplus to policyholders and unearned premium reserve,
5 less the admitted asset value assigned to title plants, as shown in
6 the most recent annual statement of the title insurer on file in the
7 office of the director.

8 2. The director may waive the limitation of this section for
9 a particular risk upon application of the title insurer and for good
10 cause shown.]

[381.062. Before being licensed to do an insurance business
2 in this state, a title insurer shall establish and maintain a
3 minimum paid-in capital of not less than four hundred thousand
4 dollars and, in addition, paid-in initial surplus of at least four
5 hundred thousand dollars.]

[381.065. 1. The net retained liability of a title insurer for
2 a single risk in regard to property located in this state, whether
3 assumed directly or as reinsurance, shall not exceed the aggregate
4 of fifty percent of surplus as regards policyholders plus the
5 statutory premium reserve less the company's investment in title
6 plants, all as shown in the most recent annual statement of the
7 insurer on file with the director.

8 2. For purposes of this chapter:

9 (1) A single risk shall be the insured amount of any title
10 insurance policy, except that, where two or more title insurance
11 policies are issued simultaneously covering different estates in the
12 same real property, a single risk shall be the sum of the insured
13 amounts of all the title insurance policies; and

14 (2) A policy under which a claim payment reduces the
15 amount of insurance under one or more other title insurance
16 policies shall be included in computing the single risk sum only to
17 the extent that its amount exceeds the aggregate amount of the
18 policy or policies whose amount of insurance is reduced.

19 3. A title insurer may obtain reinsurance for all or any part
20 of its liability under its title insurance policies or reinsurance
21 agreements and may also reinsure title insurance policies issued by
22 other title insurers on single risks located in this state or
23 elsewhere. Reinsurance on policies issued on properties located in
24 this state may be obtained from any title insurers licensed to
25 transact title insurance business in this state, any other state, or
26 the District of Columbia and which have a combined capital and
27 surplus of at least eight hundred thousand dollars.

28 4. The director may waive the limitation of this section for
29 a particular risk upon application of the title insurer and for good
30 cause shown.]

 [381.068. In determining the financial condition of a title
2 insurer doing business pursuant to this chapter, the general
3 investment provisions of sections 376.300 to 376.305, RSMo, shall
4 apply; except that, an investment in a title plant or plants in an
5 amount equal to the actual cost shall be allowed as an admitted
6 asset for title insurers. The aggregate amount of the investment
7 shall not exceed fifty percent of surplus to policyholders, as shown
8 on the most recent annual statement of the title insurer on file
9 with the director.]

 [381.071. 1. No title insurance policy shall be written
2 unless and until the title insurer, title agent, or agency has:

3 (1) Caused a search of title to be made from the evidence
4 prepared from a title plant of the county where the property is
5 located as herein defined, or if no such title plant of the county

exists, or the owner of such plant refuses to furnish the title insurer, title agent, or agency desiring to insure, such title evidence at a reasonable charge and within a reasonable period of time, then such policy of title insurance shall be based upon the best title evidence available. An attorney licensed to practice law in this state may upon personal inspection use the best evidence available in any county and is not subject to the provisions of the title plant requirement of sections 381.011 to 381.241. The records on which the title plant is based on shall show all prior matters affecting the title to the property or interest therein for a continuous period of time of at least:

(a) The past ten years, by two years after September 28, 1987;

(b) The past fifteen years, by three years after September 28, 1987;

(c) The past twenty years, by four years after September 28, 1987; and

(d) The past twenty-seven years, by five years after September 28, 1987; and

(2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.

2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

3. Evidence of the examination of title and determination of insurability shall be preserved and retained in the files of the title insurer or its title agent or agency for a period of not less than fifteen years after the title insurance policy has been issued. Instead of retaining the original evidence, the title insurer or title agent or agency may in the regular course of business establish a system whereby all or part of the evidence is recorded, copied, or reproduced by any process that accurately and legibly reproduces or forms a durable medium for reproducing the contents of the original.

4. This section shall not apply to:

43 (1) A title insurer assuming liability through a contract of
44 reinsurance;

45 (2) A title insurer acting as coinsurer if one of the other
46 coinsuring title insurers has complied with this section; or

47 (3) Policies of title insurance issued prior to the expiration
48 of one year after September 28, 1987.]

 [381.072. In determining the financial condition of a title
2 insurer doing business pursuant to this chapter, the general
3 provisions of the insurance code requiring the establishment of
4 reserves sufficient to cover all known and unknown liabilities
5 including allocated and unallocated loss adjustment expense, shall
6 apply; except that, a title insurer shall establish and maintain:

7 (1) (a) A known claim reserve in an amount estimated to
8 be sufficient to cover all unpaid losses, claims and allocated loss
9 adjustment expenses arising under title insurance policies for
10 which the title insurer may be liable, and for which the insurer has
11 discovered or received notice by or on behalf of the insured or
12 escrow or security depositor;

13 (b) Upon receiving notice from or on behalf of the insured
14 of a title defect in or lien or adverse claim against the title of the
15 insured that may result in a loss or cause expense to be incurred
16 in the proper disposition of the claim, the title insurer shall
17 determine the amount to be added to the reserve, which amount
18 shall reflect a careful estimate of the loss or loss expense likely to
19 result by reason of the claim;

20 (c) Reserves required pursuant to this section may be
21 revised from time to time and shall be redetermined at least once
22 each year;

23 (2) A statutory or unearned premium reserve established
24 and maintained as follows:

25 (a) A domestic title insurer shall establish and maintain an
26 unearned premium reserve computed in accordance with this
27 section, and all sums attributed to such reserve shall at all times
28 and for all purposes be considered and constitute unearned portions
29 of the original premiums. This reserve shall be reported as a
30 liability of the title insurer in its financial statements;

31 (b) The unearned premium reserve shall be maintained by

32 the title insurer for the protection of holders of title insurance
33 policies. Except as provided in this section, assets equal in value
34 to the reserve are not subject to distribution among creditors or
35 stockholders of the title insurer until all claims of policyholders or
36 claims under reinsurance contracts have been paid in full, and all
37 liability on the policies or reinsurance contracts has been paid in
38 full and discharged or lawfully reinsured;

39 (c) The unearned premium reserve shall consist of:

40 a. The amount of the unearned premium reserve on
41 January 1, 2001; and

42 b. A sum equal to fifteen cents for each one thousand
43 dollars of net retained liability under each title insurance policy,
44 excluding mortgagee's policies simultaneously issued with owner's
45 policies or owner's leasehold policies of the same or greater amount,
46 on a single risk written on properties located in this state and
47 issued after January 1, 2001;

48 (d) Amounts placed in the unearned premium reserve in
49 any year in accordance with paragraph (c) of this subdivision shall
50 be deducted in determining the net profit of the title insurer for
51 that year;

52 (e) A title insurer shall release from the unearned premium
53 reserve a sum equal to ten percent of the amount added to the
54 reserve during a calendar year on July first of each of the five
55 years following the year in which the sum was added, and shall
56 release from the unearned premium reserve a sum equal to three
57 and one-third percent of the amount added to the reserve during
58 that year on each succeeding July first until the entire amount for
59 that year has been released. The amount of the unearned premium
60 reserve or similar unearned premium reserve maintained before
61 January 1, 2001, shall be released in accordance with the law in
62 effect immediately before January 1, 2001;

63 (f) a. Each domestic and foreign title insurer shall file
64 annually with the audited financial report required pursuant to
65 section 375.1032, RSMo, an actuarial certificate made by a member
66 in good standing of the American Academy of Actuaries, or by an
67 actuary permitted to make such certificate by the commissioner,
68 superintendent or director of the department of insurance of the

state of incorporation of a foreign title insurer;

b. The actuarial certification shall conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and shall include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. The reserves analyzed pursuant to this section shall include reserves for known claims, including adverse developments on known claims, and reserves for incurred but not reported claims;

(g) a. Each domestic and foreign title insurer shall establish a supplemental reserve in the amount by which the actuarially certified reserves exceed the total of the known claim reserve and statutory premium reserve as set forth in the title insurer's annual financial report, subject to this subdivision;

b. The supplemental reserve required pursuant to this section shall be phased in as follows:

i. Twenty-five percent of the otherwise applicable supplemental reserve is required until December thirty-first of the year next following January 1, 2001;

ii. Fifty percent of the otherwise applicable supplemental reserve is required until December thirty-first of the second year following January 1, 2001;

iii. Seventy-five percent of the otherwise applicable supplemental reserve is required until December thirty-first of the third year following January 1, 2001;

iv. One hundred percent of the supplemental reserve is required after December thirty-first of the fourth year following January 1, 2001.]

[381.075. 1. Sections 375.570 to 375.750, RSMo, and sections 375.1150 to 375.1246, RSMo, shall apply to all title insurers subject to the title insurance act, except as otherwise provided in this section. In applying such sections, the court shall consider the unique aspects of title insurance and shall have broad authority to fashion relief that provides for the maximum protection of the title insurance policyholders.

2. Security and escrow funds held by or on behalf of the title insurer shall not become general assets and shall be

10 administered as secured claims as defined in section 375.1152,
11 RSMo.

12 3. Title insurance policies that are in force at the time an
13 order of liquidation is entered shall not be canceled except upon a
14 showing to the court of good cause by the liquidator. The
15 determination of good cause shall be within the discretion of the
16 court. In making this determination, the court shall consider the
17 unique aspects of title insurance and all other relevant
18 circumstances.

19 4. The court may set appropriate dates that potential
20 claimants must file their claims with the liquidator. The court may
21 set different dates for claims based upon the title insurance policy
22 than for all other claims. In setting dates, the court shall consider
23 the unique aspects of title insurance and all other relevant
24 circumstances.

25 5. As of the date of the order of insolvency or liquidation,
26 all premiums paid, due or to become due under policies of the title
27 insurers, shall be fully earned. It shall be the obligation of title
28 agencies, title agents, insureds or representatives of the title
29 insurer to pay fully earned premium to the liquidator or
30 rehabilitator.]

[381.078. A title insurer shall only declare or distribute a
2 dividend to shareholders with the prior written approval of the
3 director, as would be permitted pursuant to subdivision (1) of
4 subsection 1 of section 382.210, RSMo.]

[381.081. 1. A domestic title insurer shall establish and
2 maintain an unearned premium reserve computed in accordance
3 with this section, and all sums attributed to such reserve shall at
4 all times and for all purposes be considered and constitute
5 unearned portions of the original premiums. This reserve shall be
6 reported as a liability of the title insurer in its financial
7 statements.

8 2. The unearned premium reserve shall be maintained by
9 the title insurer for the protection of holders of title insurance
10 policies. Except as provided in this section, assets equal in value
11 to the reserve are not subject to distribution among creditors or
12 stockholders of the title insurer until all claims of policyholders or

claims under reinsurance contracts have been paid in full, and all liability on the policies or reinsurance contracts has been paid in full and discharged or lawfully reinsured.

3. A foreign or alien title insurer licensed to transact title insurance business in this state shall maintain at least the same reserves on title insurance policies issued on properties located in this state as are required of domestic title insurers, unless the laws of the jurisdiction of domicile of the foreign or alien title insurer require a higher amount.

4. The unearned premium reserve shall consist of:

(1) The amount of the unearned premium reserve on September 28, 1987; and

(2) A sum equal to fifteen cents for each one thousand dollars of net retained liability under each title insurance policy, excluding mortgagee's policies simultaneously issued with owner's policies or owner's leasehold policies of the same or greater amount, on a single risk written on properties located in this state and issued after September 28, 1987.

5. Amounts placed in the unearned premium reserve in any year in accordance with subdivision (2) of subsection 4 of this section shall be deducted in determining the net profit of the title insurer for that year.

6. A title insurer shall release from the unearned premium reserve a sum equal to ten percent of the amount added to the reserve during a calendar year on July first of each of the five years following the year in which the sum was added, and shall release from the unearned premium reserve a sum equal to three and one-third percent of the amount added to the reserve during that year on each succeeding July first until the entire amount for that year has been released. The amount of the unearned premium reserve or similar unearned premium reserve maintained before September 28, 1987, shall be released in accordance with the law in effect immediately before September 28, 1987.]

[381.085. 1. A title insurer or authorized rate service organization shall not deliver or issue for delivery or permit any of its authorized title agencies or title agents to deliver in this state, any form, in connection with title insurance written, unless it has

5 been filed with the director and approved by the director or thirty
6 days have elapsed and it has not been disapproved as misleading
7 or violative of public policy. Each violation of this subsection is a
8 class C violation as that term is defined in section 381.045.

9 2. Forms covered by this section shall include:

10 (1) Title insurance policies, including standard form
11 endorsements; and

12 (2) Title insurance commitments issued prior to the
13 issuance of a title insurance policy.

14 3. After notice and opportunity to be heard are given to the
15 insurer or rate service organization which submitted a form for
16 approval, the director may withdraw approval of the form on
17 finding that the use of the form is contrary to the legal
18 requirements applicable at the time of withdrawal. The effective
19 date of withdrawal of approval shall not be less than ninety days
20 after notice of withdrawal is given.

21 4. Any term or condition related to an insurance coverage
22 provided by an approved title insurance policy or any exception to
23 the coverage, except those ascertained from a search and
24 examination of records relating to a title or inspection or survey of
25 a property to be insured, may only be included in the policy after
26 the term, condition or exception has been filed with the director
27 and approved as herein provided.]

 [381.088. 1. A title insurer may satisfy its obligation to file
2 premium rates, rating manuals and forms as required by this
3 chapter by becoming a member of, or a subscriber to, a rate service
4 organization, organized and licensed pursuant to the provisions of
5 this chapter, where the organization makes the filings, and by
6 authorizing the director in writing to accept the filings on the
7 insurer's behalf.

8 2. Nothing in this chapter shall be construed as requiring
9 any title insurer, title agency or title agent to become a member of,
10 or a subscriber to, any rate service organization. Nothing in this
11 chapter shall be construed as prohibiting the filing of deviations
12 from rate service organization filings by any member or
13 subscriber.]

 [381.091. 1. If a domestic title insurer becomes insolvent,

is in the process of liquidation or dissolution, or is in the possession of the director:

(1) Such amount of the assets of such title insurer equal to the unearned premium reserve then remaining may be used by or with the written approval of the director to pay for reinsurance of the liability of such title insurer upon all outstanding title insurance policies or reinsurance agreements to the extent to which claims for losses by the holders thereof are not then pending. The balance of assets, if any, equal to the unearned premium reserve, may then be transferred to the general assets of the title insurer;

(2) The net assets of the unearned premium reserve shall be available to pay claims for losses sustained by holders of title insurance policies then pending or arising up to the time reinsurance is effected. If claims for losses exceed such other assets of the title insurer, such claims, when established, shall be paid pro rata out of the surplus assets attributable to the unearned premium reserve to the extent of such surplus, if any.

2. If reinsurance is not obtained, assets equal to the unearned premium reserve and assets constituting minimum capital, or so much as remains thereof after outstanding claims have been paid, shall constitute a trust fund to be held and invested by the director for twenty years, out of which claims of policyholders shall be paid as they arise. The balance, if any, of the trust fund shall, at the expiration of twenty years, revert to the general assets of the title insurer.]

[381.092. 1. Every title insurer that shall propose its own premium rates and every title insurance rating organization shall propose premium rates that are not excessive nor inadequate for the safety and soundness of any title insurer, which do not unfairly discriminate between risks in this state which involve essentially the same exposure to loss and expense elements, and which shall give due consideration to the following matters:

(1) The desirability for stability and responsiveness of rate structures;

(2) The necessity of assuring the financial solvency of title insurance companies in periods of economic depression;

(3) The necessity for paying dividends on the capital stock

13 of title insurance companies sufficient to induce capital to be
14 invested therein; and

15 (4) A reasonable level of profit for the insurer.

16 2. Every title insurer that shall propose its own rates and
17 every title insurance rating organization may adopt basic
18 classifications of policies or contracts of title insurance which shall
19 be used as the basis for rates.]

[381.095. 1. If the director shall find in his review of rate
2 filings that the filings provide for, result in, or produce rates that
3 are not unreasonably high, and are not inadequate for the safeness
4 and soundness of the insurer, and are not unfairly discriminatory
5 between risks in this state involving essentially the same hazards
6 and expense elements, the director shall approve such rates. Prior
7 to such approval the director may conduct a public hearing with
8 respect to a rate filing. An approval shall continue in effect until
9 the director shall issue an order of disapproval pursuant to the
10 requirements and procedure provided for in subsections 2 and 3 of
11 this section.

12 2. Upon the review at any time by the director of a rate
13 filing, the director shall, before issuing an order of disapproval,
14 hold a hearing upon not less than ten days' written notice,
15 specifying in reasonable detail the matters to be considered at such
16 hearing, to every title insurer and title insurance rating
17 organization which made such filing, and if, after such hearing, the
18 director finds that such filing or a part thereof does not meet the
19 requirements of this chapter, the director shall issue an order
20 specifying in what respects the director finds that it so fails, and
21 stating when, within a reasonable period thereafter, such filing or
22 a part thereof shall be deemed no longer effective. A title insurer
23 or title insurance rating organization shall have the right at any
24 time to withdraw a filing or a part thereof, subject to the provisions
25 of section 381.102, in the case of deviation filing. Copies of the
26 order shall be sent to every title insurer and title insurance rating
27 organization affected. The order shall not affect any contract or
28 policy made or issued prior to the expiration of the period set forth
29 in the order.

30 3. Any person or organization aggrieved with respect to any

filing which is in effect may make written application to the director for a hearing thereon. The title insurance company or title insurance rating organization that made the filing shall not be authorized to proceed pursuant to this subsection. Such application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the director shall find that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, and that such grounds otherwise justify holding such a hearing, the director shall, within thirty days after receipt of such application, hold a hearing upon not less than ten days' written notice to the applicant and to every title insurance company and title insurance rating organization which made such a filing. If, after such hearing, the director finds that the filing or a part thereof does not meet the requirements of this chapter, the director shall issue an order specifying in what respects the director finds that such filing or a part thereof fails to meet the requirements of this chapter, stating when within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective. Copies of such order shall be sent to the applicant and to every such title insurer and title insurance rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.]

[381.098. 1. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the director for license as a rating organization for title insurers, and shall file therewith:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business;

(2) A list of its members and subscribers;

(3) The name and address of a resident of this state upon whom notices or orders of the director or process affecting such rating organization may be served; and

(4) A statement of its qualifications as a title insurance rating organization.

2. If the director finds that the applicant is competent,

trustworthy and otherwise qualified to act as a rating organization, and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, conform to requirements of law, the director shall issue a license authorizing the applicant to act as a rating organization for title insurance. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the director or withdrawn by the licensee. The fee for such license shall be one thousand five hundred dollars. Licenses issued pursuant to this section may be suspended or revoked by the director, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the director promptly of every change in:

(1) Its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the director or process affecting such rating organization may be served.

3. Subject to rules and regulations which have been approved by the director as reasonable, each title insurance rating organization shall permit any title insurance company not a member to be a subscriber to its rating services. Notices of proposed changes in such rules and regulations shall be given to subscribers. Each such rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any such rating organization to admit a title insurance company as a subscriber, shall at the request of any subscriber or any such title insurance company, be reviewed by the director at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber. If the director finds that such rule or regulation is unreasonable in its application to subscribers, the director shall order that such rule or regulation shall not be applicable to

52 subscribers. If the rating organization fails to grant or reject an
53 application of a title insurance company for subscribership within
54 thirty days after it was made, the title insurance company may
55 request a review by the director as if the application had been
56 rejected. If the director finds that the title insurance company has
57 been refused admittance to the title insurance rating organization
58 as a subscriber without justification, the director shall order such
59 rating organization to admit the title insurance company as a
60 subscriber. If the director finds that the action of the title
61 insurance rating organization was justified, the director shall make
62 an order affirming its action.]

[381.101. 1. All title insurers licensed in this state shall
2 establish and maintain reserves against unpaid losses and loss
3 expenses.

4 2. Upon receiving notice from or on behalf of the insured of
5 a title defect in or lien or adverse claim against the title of the
6 insured that may result in a loss or cause expense to be incurred
7 in the proper disposition of the claim, the title insurer shall
8 determine the amount to be added to the reserve, which amount
9 shall reflect a careful estimate of the loss or loss expense likely to
10 result by reason of the claim.

11 3. Reserves required under this section may be revised from
12 time to time and shall be redetermined at least once each year.]

[381.102. Every member of or subscriber to a title insurance
2 rating organization shall adhere to the filings made on its behalf
3 by such organization, except that any title insurance company
4 which is a member of or subscriber to such a rating organization
5 may file with the director a uniform percentage of decrease or
6 increase to be applied to any or all elements of the fees produced
7 by the rating system so filed for a class of title insurance which is
8 found by the director to be a proper rating unit for the application
9 of such uniform decrease or increase, or to be applied to the rates
10 for a particular area, or otherwise deviate from the rating plans,
11 policy forms or other matters which are the subject of filings
12 pursuant to this chapter. Such deviation filing shall specify the
13 basis for the modification and shall be accompanied by the data or
14 historical pattern upon which the applicant relies. A copy of the

15 deviation filing and data shall be sent simultaneously to such
16 rating organization. Deviation filings shall be subject to the
17 provisions of section 381.095.]

[381.105. 1. Any member of or subscriber to a title
2 insurance rating organization may appeal to the director from any
3 action or decision of such rating organization in approving or
4 rejecting any proposed change in or addition to the filings of such
5 rating organization, and the director shall, after a hearing held
6 upon not less than ten days' written notice to the appellant and to
7 such rating organization, issue an order approving the action or
8 decision of such rating organization or directing it to give further
9 consideration to such proposal and to take action or make a
10 decision upon it within thirty days. If such appeal is from the
11 action or decision of the title insurance rating organization in
12 rejecting a proposed addition to its filings, the director may, in the
13 event the director finds that such action or decision was
14 unreasonable, issue an order directing the rating organization to
15 make an addition to its filings, on behalf of its members and
16 subscribers, in a manner consistent with the director's findings,
17 within a reasonable time after the issuance of such order. If the
18 appeal is from the action of the title insurance rating organization
19 with regard to a rate or a proposed change in or addition to its
20 filings relating to the character and extent of coverage, the director
21 shall approve the action of the rating organization or such
22 modification thereof as shall have been suggested by the appellant
23 if either be made in accordance with this chapter.

24 2. The failure of a title insurance rating organization to
25 take action or make a decision within thirty days after submission
26 to it of a proposal pursuant to this section shall constitute a
27 rejection of such proposal within the meaning of this section. If
28 such appeal is based upon the failure of the rating organization to
29 make a filing on behalf of such member or subscriber which is
30 based on a system of expense allocation which differs from the
31 system of expense allocation included in a filing made by such
32 rating organization, the director shall, if the director grants the
33 appeal, order the rating organization to make the requested filing
34 for use by the appellant. In deciding such appeal, the director shall

35 apply the standards set forth in section 381.032.]

 [381.108. 1. The director shall promulgate reasonable rules
2 and statistical plans, reasonably adapted to each of the rating
3 systems on file with the department, which may be modified from
4 time to time, and which shall be used thereafter by each title
5 insurer in the recording and reporting of the composition of its
6 business, its loss and countrywide expense experience and those of
7 its title insurance underwriters in order that the experience of all
8 title insurers may be made available, at least annually, in such
9 form and detail as may be necessary to aid him or her in
10 determining whether rating systems comply with the standards set
11 forth in this chapter. Such rules and plans may also provide for
12 the recording of expense experience items which are specially
13 applicable to this state and are not susceptible of determination by
14 a prorating of countrywide expense experience. In promulgating
15 such rules and plans, the director shall give due consideration to
16 the rating systems on file with the department, and in order that
17 such rules and plans may be as uniform as is practicable among the
18 several states, to the rules and to the form of the plans used for
19 such rating systems in other states. Such rules and plans shall not
20 place an unreasonable burden of expense on any title insurer. No
21 title insurer shall be required to record or report its expense and
22 loss experience on a classification basis that is inconsistent with
23 the rating system filed by it, nor shall any title insurer be required
24 to report the experience to any agency of which it is not a member
25 or subscriber. The director may designate one or more rating
26 organizations or other agencies to assist the director in gathering
27 such experience and making compilations thereof, and such
28 compilations shall be made available, subject to reasonable rules
29 promulgated by the director, to title insurers and rating
30 organizations. The director shall give preference in such
31 designation to entities organized by and functioning on behalf of
32 title insurers operating in this state. If the director, in his or her
33 judgment, determines that one or more of such organizations
34 designated as statistical agents is unable or unwilling to perform
35 its statistical functions according to reasonable requirements
36 established from time to time by the director, he or she may, after

37 consultation with such statistical agent and upon twenty days'
38 notice to any affected companies, designate another person to act
39 on the director's behalf in the gathering of statistical
40 experience. The director shall in such case establish the fee to be
41 paid to such designated person by the affected companies in order
42 to pay the total cost of gathering and compiling such
43 experience. Agencies designated by the director shall assist the
44 director in making compilations of the reported data and such
45 compilations shall be made available, subject to reasonable rules
46 and regulations promulgated by the director, to insurers, rating
47 organizations and any other interested parties.

48 2. Reasonable rules and plans may be promulgated by the
49 director for the interchange of data necessary for the application of
50 rating plans.

51 3. In order to further uniform administration of rate
52 regulatory laws, the director and every title insurer and rating
53 organization may exchange information and experience data with
54 insurance supervisory officials, title insurers and rating
55 organizations in other states, and may consult with them with
56 respect to rate making and the application of rating systems.

57 4. No rule or portion of a rule promulgated pursuant to the
58 authority of this section shall become effective unless it has been
59 promulgated pursuant to the provisions of chapter 536, RSMo.]

2 [381.111. A title insurer may obtain reinsurance for all or
3 any part of its liability under its title insurance policies or
4 reinsurance agreements and may also reinsure title insurance
5 policies issued by other title insurers on single risks located in this
6 state or elsewhere. Reinsurance on policies issued on properties
7 located in this state may be obtained from any title insurers
8 licensed to transact title insurance business in this state, any other
9 state, or the District of Columbia and which have a combined
capital and surplus of at least eight hundred thousand dollars.]

2 [381.112. For purposes of the premium tax imposed by
3 sections 148.320 and 148.340, RSMo, the premium income received
4 by a title insurer shall mean the amount of premium actually
5 remitted to the title insurer and shall exclude any amount of
premium retained by the title agent within the definition of

6 "premium" contained in section 381.009.]

2 [381.115. 1. A person shall not act in the capacity of a title
3 agency or title agent and a title insurer may not contract with any
4 person to act in the capacity of a title agency or title agent with
5 respect to risks located in this state unless the person is a licensed
6 title agency or title agent in this state.

7 2. An individual employed by a licensed title agency or title
8 agent to whom the agency or agent delegates authority to act on
9 that agency's or agent's behalf shall be either individually licensed
10 or be named on the employing agent's license if such employee
11 performs any of the functions defined in paragraph (a) of
12 subdivision (25) of section 381.009. Each person named on the
13 license shall possess all qualifications determined by the director
14 to be appropriate. The director may adopt rules, regulations, and
15 requirements relating to licensing and practices of persons acting
16 in the capacity of title agencies or agents. These persons may
17 include title agencies, title agents, employees of either, and persons
18 acting on behalf of title agencies or title agents. This subsection is
19 not intended to include persons performing clerical functions.

20 3. Every title agency licensed in this state shall:

21 (1) Exclude or eliminate the word insurer or underwriter
22 from its business name, unless the word agency is also included as
23 part of the name; and

24 (2) Provide, in a timely fashion, each title insurer with
25 which it places business any information the title insurer requests
26 in order to comply with reporting requirements of the director.

27 4. A title agency or title agent licensed in this state prior
28 to the effective date of this chapter shall have ninety days after the
29 effective date of this chapter to comply with the requirements of
30 this section.

31 5. If the title agency or title agent delegates the title search
32 to a third party, such as an abstract company, the agency or agent
33 must first obtain proof that the third party is operating in
34 compliance with rules and regulations established by the director
35 and the third party shall provide the agency or agent and the
36 insurer with access to and the right to copy all accounts and
records maintained by the third party with respect to business

37 placed with the title insurer. Proof from the third party may
38 consist of a signed statement indicating compliance, and shall be
39 effective for a three-year period. Each violation of this subsection
40 is a class C violation as that term is defined in section 381.045.]

[381.118. 1. Each title agent licensed to sell title insurance
2 in this state, unless exempt pursuant to subsection 8 of this
3 section, shall successfully complete courses of study as required by
4 this section. Any person licensed to act as a title agent shall,
5 during each two years, attend courses or programs of instruction or
6 attend seminars equivalent to a minimum of eight hours of
7 instruction. The initial such two-year period shall begin January
8 first of the year next following the effective date of this chapter.

9 2. Subject to approval by the director, the courses or
10 programs of instruction which shall be deemed to meet the
11 director's standards for continuing educational requirements shall
12 include, but not be limited to, the following:

13 (1) An insurance-related course taught by an accredited
14 college or university or qualified instructor who has taught a course
15 of insurance law at such institution;

16 (2) A course or program of instruction or seminar developed
17 or sponsored by any authorized insurer, recognized agents'
18 association or insurance trade association. A local agents' group
19 may also be approved if the instructor receives no compensation for
20 services;

21 (3) Courses approved for continuing legal education credit
22 by the Missouri Bar.

23 3. A person teaching any approved course of instruction or
24 lecturing at any approved seminar shall qualify for the same
25 number of classroom hours as would be granted to a person taking
26 and successfully completing such course, seminar or program.

27 4. Excess classroom hours accumulated during any two-year
28 period may be carried forward to the two-year period immediately
29 following the two- year period in which the course, program or
30 seminar was held.

31 5. For good cause shown, the director may grant an
32 extension of time during which the educational requirements
33 imposed by this section may be completed, but such extension of

time shall not exceed the period of one calendar year. The director may grant an individual waiver of the mandatory continuing education requirement upon a showing by the licensee that it is not feasible for the licensee to satisfy the requirements prior to the renewal date. Waivers may be granted for reasons including, but not limited to:

- (1) Serious physical injury or illness;
- (2) Active duty in the armed services for an extended period of time;
- (3) Residence outside the United States; or
- (4) Licensee is at least seventy years of age and is currently licensed as a title agent.

6. Every person subject to the provisions of this section shall furnish in a form satisfactory to the director, written certification as to the courses, programs, or seminars of instruction taken and successfully completed by such person. A filing fee shall be paid by the person furnishing the report as determined by the director to be necessary to cover the administrative cost related to the handling of such certification reports, subject to the limitations imposed in subsection 9 of this section.

7. The provisions of this section shall not apply to those natural persons holding or applying for a license to act as a title agent in Missouri who reside in a state that has enacted and implemented a mandatory continuing education law or regulation pertaining to title agents. However, those natural persons holding or applying for a Missouri agent license who reside in states which have no mandatory continuing education law or regulations shall be subject to all the provisions of this section to the same extent as resident Missouri title agents.

8. Rules necessary to implement and administer this section shall be promulgated by the director of the department of insurance, including, but not limited to, rules regarding the following:

- (1) The insurance advisory board established by section 375.019, RSMo, shall be utilized by the director to assist the director in determining acceptable content of courses, programs and seminars to include classroom equivalency;

71 (2) Every applicant seeking approval by the director of a
72 continuing education course pursuant to this section shall pay to
73 the director a filing fee of fifty dollars per course, except that such
74 total fee shall not exceed two hundred fifty dollars per year for any
75 single applicant. Fees shall be waived for local agents' groups if
76 the instructor receives no compensation for services. Such fee shall
77 accompany any application form required by the director. Courses
78 shall be approved for a period of no more than one
79 year. Applicants holding courses intended to be offered for a longer
80 period must reapply for approval;

81 (3) The director has the authority to determine the amount
82 of the filing fee to be paid by title agents at the time of license
83 renewal, which shall be set at an amount to produce revenue which
84 shall not substantially exceed the cost of administering this section,
85 but in no event shall such fee exceed ten dollars per biennial report
86 filed.

87 9. All funds received pursuant to the provisions of this
88 section shall be transmitted by the director of the department of
89 insurance to the department of revenue for deposit in the state
90 treasury to the credit of the department of insurance dedicated
91 fund. All expenditures necessitated by this section shall be paid
92 from funds appropriated from the department of insurance
93 dedicated fund by the legislature.

94 10. When a title agent pays his or her biennial renewal fee,
95 such agent shall also furnish the written certification and filing fee
96 required by this section.

97 11. No rule or portion of a rule promulgated pursuant to the
98 authority of this section shall become effective unless it has been
99 promulgated pursuant to the provisions of chapter 536, RSMo.]

2 [381.121. 1. The deposit required by section 381.051 and
3 the capital, surplus and unearned premium reserve of domestic
4 title insurers shall be held in either cash or investments now or
5 hereafter permitted to domestic life insurers with regard to their
6 capital, reserve and surplus for reserve deposit.

7 2. A domestic title insurer may invest in title plants. For
8 purposes of determining the financial condition of such title
insurer, title plants will be treated as an asset valued at actual cost

9 to the title insurer, not to exceed fifty percent of the surplus as to
10 policyholders as shown on the most recent annual statement of the
11 title insurer.

12 3. Any investment of a domestic title insurer acquired
13 before September 28, 1987, and which under such sections, would
14 be considered ineligible as an investment on that date, shall be
15 disposed of within five years of September 28, 1987. The director,
16 upon application and proof that forced sale of any such investment
17 would be contrary to the best interests of the title insurer or its
18 policyholders, may extend the period for disposal of the investment
19 for a reasonable time.]

[381.122. The director may during normal business hours
2 examine, audit and inspect any and all books and records
3 maintained by a title agency pursuant to this chapter.]

[381.125. 1. Whenever the business to be written
2 constitutes affiliated business, prior to commencing the transaction,
3 the title agency or title agent shall ensure that its customer has
4 been provided with disclosure of the existence of the affiliated
5 business arrangement and a written estimate of the charge or
6 range of charges generally made for the title services provided by
7 the title agency or agent.

8 2. The director may establish rules for use by all title
9 agencies in the recording and reporting of the agency's owners and
10 of the agency's ownership interests in other persons or businesses
11 and of material transactions between the parties.

12 3. The director may require each title agency to file on
13 forms prescribed by the director reports setting forth the names
14 and addresses of those persons, if any, that have a financial
15 interest in the agency and who the agency knows or has reason to
16 believe are producers of title insurance business or associates of
17 producers.

18 4. Nothing in this chapter shall be construed as prohibiting
19 affiliated business arrangements in the provision of title insurance
20 business so long as:

21 (1) The title agency, title agent or party making a referral
22 constituting affiliated business, at or prior to the time of the
23 referral, discloses the arrangement and, in connection with the

24 referral, provides the person being referred with a written estimate
25 of the charge or range of charges likely to be assessed and
26 otherwise complies with the disclosure obligations of this section;

27 (2) The person being referred is not required to use a
28 specified title insurance agency, agent or insurer; and

29 (3) The only thing of value that is received by the title
30 agency, title agent or party making the referral, other than
31 payments otherwise permitted, is a return on an ownership
32 interest.

33 For purposes of this subsection, the terms "required use" and
34 "return on an ownership interest" shall have the meaning accorded
35 to them under the Real Estate Settlement Procedures Act (RESPA),
36 12 U.S.C. Section 2607, as amended and Regulation X, 24 CFR
37 Section 3500, et seq.

38 5. Each violation of any provision of this section is a class
39 C violation as that term is defined in section 381.045.]

[381.131. Any person who shall be appointed or who shall
2 act as title insurance agent or agency for any title insurance
3 company within this state, or who shall, as title insurance agent or
4 agency, solicit applications, deliver policies and collect premiums
5 thereon, or who shall receive or collect moneys from any source or
6 on any account whatsoever, as agent or agency, for a title insurance
7 company doing business in this state, shall be held responsible in
8 a trust or fiduciary capacity to the company for any money so
9 collected or received by him for such company.]

[381.141. 1. No title insurer or title agent or agency shall:

2 (1) Pay, directly or indirectly, to the insured or to any other
3 person any commission, any part of its premiums, fees, or other
4 charges; or any other consideration as inducement or compensation
5 for the referral of title business or for performance of any escrow
6 or other service by the title agent or agency; or

7 (2) Issue any title insurance policy or perform any service
8 in connection with any transaction in which it has paid or intends
9 to pay any commission, rebate or inducement which it knows to be
10 in violation of this section.

11 2. Nothing in this section shall be construed as prohibiting
12 reasonable payments, other than for the referral of title insurance

13 business, for services actually rendered to either a title insurer or
14 a title agent or agency in connection with title insurance business.

15 3. Nothing in sections 381.011 to 381.241 shall prohibit any
16 producer or any associate of a producer from referring title
17 business to any title insurer or title insurance agent or agency of
18 his, her or its choice, and if such producer or associate producer
19 has any financial, franchise, or ownership interest in the title
20 insurer, the title insurance agent or agency, from financial,
21 franchise or ownership interest so long as the purchaser is made
22 aware in writing of the relationship between the producer or
23 associate producer and the title agent or agency.]

[381.151. Nothing in sections 381.011 to 381.241 shall be
2 construed as prohibiting the division of premiums and charges
3 between or among a title insurer and its title agent or agency, two
4 or more title insurers, one or more title insurers and one or more
5 title agents or agencies or two or more title agents or agencies,
6 provided such division of premiums and charges does not
7 constitute:

8 (1) An unlawful rebate or inducement under the provisions
9 of sections 381.011 to 381.241; or

10 (2) Payment of a forwarding fee or finder's fee.]

[381.161. 1. No producer or other person, except the person
2 paying the premium for the title insurance, shall require, directly
3 or indirectly, or through any trustee, director, officer, agent,
4 employee, or affiliate, as a condition, agreement, or understanding
5 to selling or furnishing any other person any loan, or extension
6 thereof, credit, sale, property, contract, lease or service, that such
7 other person shall place, any contract of title insurance of any kind
8 through any particular title agent, agency, or title insurer. No title
9 agent, agency, or title insurer shall knowingly participate in any
10 such prohibited plan or transaction. No person shall fix a price
11 charged for such thing or service, or discount from or rebate upon
12 price, on the condition, agreement, or understanding that any title
13 insurance is to be obtained through a particular agent, agency, or
14 title insurer.

15 2. Any person who violates the provisions of this section, or
16 any title insurer, title agent, or agency who accepts an order for

17 title insurance knowing that it is in violation of the provision of
18 this section shall, in addition to any other action which may be
19 taken by the director, be subject to a fine in an amount equal to
20 five times the premium for the title insurance.]

[381.171. 1. Premiums shall not be inadequate, excessive
2 or unfairly discriminatory.

3 2. Premiums are excessive if, in the aggregate, they are
4 likely to produce a long run profit that is unreasonably high in
5 relation to the riskiness of the business or if expenses are
6 unreasonably high in relation to the services rendered.

7 3. Premiums are inadequate if they are clearly insufficient,
8 together with investment income attributable to them, to sustain
9 projected losses and expenses or if continued use of such premiums
10 will have the effect of substantially lessening competition or the
11 effect of tending to create a monopoly.

12 4. Premiums are unfairly discriminatory if the premium
13 charged for a policy of any particular face amount of liability is
14 higher than the premium for an indential policy within the same
15 classification where such policy has a like face amount or a higher
16 face amount of liability. Premiums within each premium
17 classification may, in the discretion of the title insurer, to a
18 reasonable degree be less than the expenses incurred and the risks
19 assumed in the case of policies of lower face amount of liability and
20 the excess may be charged against policies of higher face amount
21 of liability without rendering the premiums unfairly discriminatory.

22 5. Premiums may be grouped by classifications into the
23 various types of title policies and endorsements offered. The
24 classifications may be further divided to produce premiums for
25 individual risks or services within a classification. Those
26 classifications or further divisions may be established based upon
27 any one or more of the following:

28 (1) The size of a transaction and its effect upon the
29 continuing solvency of the title insurer using the rate in question
30 if a loss should occur;

31 (2) Expense elements, including management time that
32 would ordinarily be expended in a typical transaction of a
33 particular size;

(3) The geographic location of a transaction, including variation in risk and expense elements attributable thereto;

(4) The individual experience of the insurer and title insurance agent or agency using the rate in question; and

(5) Any other reasonable considerations which may include but not be limited to builder/developer quantity discounts and multiple policy discounts on an individual parcel of property. Those classifications or further divisions thereof shall apply to all risks and services in the business of title insurance under the same or under substantially the same circumstances or conditions.

6. In making or reviewing premiums due consideration shall be given to past and prospective loss experience, to exposure to loss, to underwriting practice and judgment, to past and prospective expenses including amounts paid to or retained by title agents or agencies, to a reasonable margin for profit and contingencies taking into account the need for a reasonable return on capital committed to the enterprise, and to all other relevant factors both within and outside of this state.

7. The director may promulgate rules or regulations setting forth guidelines for the evaluation of premiums. Such regulations may include consideration of:

- (1) Cost of underwriting risks assumed by the insurer;
- (2) Amounts paid to or retained by title agents;
- (3) Operating expenses of the insurer other than underwriting and claims expense;
- (4) Payment of claims and claim related expenses;
- (5) Investment income;
- (6) Reasonable profit;
- (7) Premium taxes; and
- (8) Any other factors the director deems relevant.]

[381.181. 1. Every title insurer shall file with the director its premium schedules it proposes to use in any county of this state. Every filing shall set forth its effective date, which shall not be earlier than the thirtieth day following its receipt by the director, and shall indicate the character and extent of the coverages and services contemplated. Filings that the director has

7 not disapproved within thirty days of filing shall be deemed
8 effective.

9 2. No title insurer or title agent or agency may use or
10 collect any premium after September 28, 1987, except in accordance
11 with the premium schedules filed with the director as required by
12 subsections 1 and 2 of this section. The director may provide by
13 regulation for interim use of premium schedules in effect prior to
14 September 28, 1987.

15 3. Every title insurer shall establish basic classifications of
16 coverages to be used as the basis for determining premiums.]

[381.191. In order to further uniform administration of rate
2 regulatory laws, the director and every title insurer, title agent, or
3 agency in the state may exchange information and experience data
4 with insurance supervisory officials of this and other states and
5 rating organizations in other states and may consult with them
6 with respect to such information and data.]

[381.201. 1. No title insurer, title agent, or agency shall
2 use any premium in the business of title insurance prior to its
3 effective date nor prior to the filing with respect to such premium
4 having been publicly displayed and made readily available to the
5 public for a period of not less than thirty days in each office of the
6 title insurer, title agent, or agency in the county to which such
7 rates apply, and no premium increase shall apply to title policies
8 which have been contracted for prior to such effective date.

9 2. Premium charges in excess of those set forth in a
10 premium filing which has become effective may be made when such
11 filing includes a statement that such premiums may be made in the
12 event unusual insurance risks are assumed or unusual services
13 performed in the transaction of the business of title insurance,
14 provided that such premiums are reasonably commensurate with
15 the risks assumed for the costs of the services performed.

16 3. Copies of the schedules of premiums which are required
17 to be filed with the director under the provisions of sections
18 381.011 to 381.241, showing their effective date or dates, shall be
19 kept at all times available to the public and prominently displayed
20 in a public place in each office of a title insurer, title agent, or
21 agency in the county to which such rates apply while such rates are

22 effective.]

2 [381.211. Every title insurer shall file with the director
3 copies of the following forms it proposes to use in this state,
4 including:

- 4 (1) Title insurance policies;
5 (2) Standard form endorsements; and
6 (3) Preliminary reports, commitments, binders, or any other
7 reports issued prior to the issuance of a title insurance policy.]

2 [381.221. For purposes of the premium tax imposed by
3 sections 148.320 and 148.340, RSMo, the premium income received
4 by a title insurer shall be one hundred percent of the amounts paid
5 by or on behalf of the insured as "premiums" within the definition
6 of that term contained in sections 381.011 to 381.241.]

2 [381.231. In addition to any other powers granted under
3 sections 381.011 to 381.241, the director may adopt rules or
4 regulations to protect the interests of the public including, but not
5 limited to, regulations governing sales practices, escrow, collection,
6 settlement, closing procedures, policy coverage standards, rebates
7 and inducements, controlled business, the approval of agency
8 contracts, unfair trade practices and fraud, statistical plans for
9 data collection, consumer education, any other consumer matters,
10 the business of title insurance, or any regulations otherwise
11 implementing or interpreting the provisions of sections 381.011 to
12 381.241. No rule or portion of a rule promulgated under the
13 authority of this chapter shall become effective unless it has been
promulgated pursuant to the provisions of section 536.024, RSMo.]

2 [381.241. 1. The director of insurance or his duly
3 authorized representative may at any time and from time to time,
4 inspect and examine the records, books and accounts of any title
5 insurer, and may require such periodic and special reports from
6 any title insurer, as may be reasonably necessary to enable the
7 director to satisfy himself that such title insurer is complying with
8 the requirements of sections 381.011 to 381.241. No person shall
9 be authorized to inspect and examine the records, books and
10 accounts of any title insurer unless such person has five years
11 experience in the title insurance business. It shall be the duty of
the director at least once every four years to make or cause to be

12 made an examination of every title insurer. The reasonable
13 expense of any examination shall be paid by the title insurer.

14 2. The purpose of such examination is to enable the director
15 to ascertain whether there is compliance with the provisions of
16 sections 381.011 to 381.241. If as a result of such examination the
17 director has reason to believe that any rate, rating plan or rating
18 system made or used by an insurer does not meet the standards
19 and provisions of sections 381.011 to 381.241, applicable to it, the
20 director may hold a public hearing. Within a reasonable period of
21 time, which shall be not less than ten days before the date of such
22 hearing, he shall mail written notice specifying the matters to be
23 considered at such hearing to every person, insurer or organization
24 believed by him not to be in compliance with the provisions of
25 sections 381.011 to 381.241.

26 3. If the director, after such hearing, for good cause finds
27 that such rate, rating plan or rating system does not meet the
28 provisions of sections 381.011 to 381.241, he shall issue an order
29 specifying in what respects any such rate, rating plan or rating
30 system fails to meet such provisions, and stating when, within a
31 reasonable period of time, the further use of such rate, rating plan
32 or rating system by the title insurer which is the subject of the
33 examination shall be prohibited. A copy of such order shall be sent
34 to such title insurer.]

2 [381.410. As used in sections 381.410 and 381.412, the
following terms mean:

3 (1) "Cashier's check", a check, however labeled, drawn on
4 the financial institution, which is signed only by an officer or
5 employee of such institution, is a direct obligation of such
6 institution, and is provided to a customer of such institution or
7 acquired from such institution for remittance purposes;

8 (2) "Certified funds", U.S. currency, funds conveyed by a
9 cashier's check, certified check, teller's check, as defined in Federal
10 Reserve Regulations CC, or wire transfers, including written advice
11 from a financial institution that collected funds have been credited
12 to the settlement agent's account;

13 (3) "Director", the director of the department of insurance,
14 unless the settlement agent's primary regulator is another division

in the department of economic development. When the settlement agent is regulated by such division, that division shall have jurisdiction over sections 381.410 and 381.412;

(4) "Financial institution":

(a) A person or entity doing business under the laws of this state or the United States relating to banks, trust companies, savings and loan associations, credit unions, commercial and consumer finance companies, industrial loan companies, insurance companies, small business investment corporations licensed pursuant to the Small Business Investment Act of 1958 (15 U.S.C. Section 661, et seq.), as amended, or real estate investment trusts as defined in 26 U.S.C. Section 856, as amended, or institutions constituting the Farm Credit System pursuant to the Farm Credit Act of 1971 (12 U.S.C. Section 2000, et seq.), as amended, or any person which services loans secured by liens or mortgages on real property, which person may or may not maintain a servicing portfolio for such loans; or

(b) The following persons or entities if their principal place of business is in Missouri or a state which is contiguous to Missouri:

a. A mortgage loan company which is subject to licensing, supervision or auditing by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or the United States Veterans Administration, or the Government National Mortgage Association, or the United States Department of Housing and Urban Development, or a successor of any of the foregoing agencies or entities, as an approved seller or servicer; or

b. A person or entity acting as a mortgage loan company pursuant to court order;

(5) "Settlement agent", a person, corporation, partnership, or other business organization which accepts funds and documents as fiduciary for the buyer, seller or lender for the purposes of closing a sale of an interest in real estate located within the state of Missouri, and is not a financial institution, or a member in good standing of the Missouri Bar Association, or a person licensed under chapter 339, RSMo.]

[381.410. As used in this section and section 381.412, the

2 following terms mean:

3 (1) "Cashier's check", a check, however labeled, drawn on
4 the financial institution, which is signed only by an officer or
5 employee of such institution, is a direct obligation of such
6 institution, and is provided to a customer of such institution or
7 acquired from such institution for remittance purposes;

8 (2) "Certified funds", United States currency, funds
9 conveyed by a cashier's check, certified check, teller's check, as
10 defined in Federal Reserve Regulations CC, or wire transfers,
11 including written advice from a financial institution that collected
12 funds have been credited to the settlement agent's account;

13 (3) "Director", the director of the department of insurance,
14 unless the settlement agent's primary regulator is another division
15 in the department of economic development. When the settlement
16 agent is regulated by such division, that division shall have
17 jurisdiction over this section and section 381.412;

18 (4) "Financial institution":

19 (a) A person or entity doing business pursuant to the laws
20 of this state or the United States relating to banks, trust
21 companies, savings and loan associations or credit unions; or

22 (b) The following persons or entities if their principal place
23 of business is in Missouri or outside Missouri, but within the St.
24 Louis or Kansas City standard metropolitan statistical area:

25 a. A mortgage loan company which is subject to licensing,
26 supervision or auditing by the Federal National Mortgage
27 Association, or the Federal Home Loan Mortgage Corporation, or
28 the United States Veterans Administration, or the Government
29 National Mortgage Association, or the United States Department
30 of Housing and Urban Development, or a successor of any of the
31 foregoing agencies or entities, as an approved seller or servicer;

32 (5) "Settlement agent", a person, corporation, partnership,
33 or other business organization which accepts funds and documents
34 as fiduciary for the buyer, seller or lender for the purposes of
35 closing a sale of an interest in real estate located within the state
36 of Missouri, and is not a financial institution, or a member in good
37 standing of the Missouri Bar , or a person licensed under chapter
38 339, RSMo.]

[381.412. 1. A settlement agent who accepts funds of more than ten thousand dollars, but less than two million dollars, for closing a sale of an interest in real estate shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. The settlement agent shall record all security instruments for such real estate closing within three business days of such closing after receipt of such certified funds. A check:

(1) Drawn on an escrow account of a licensed real estate broker, as regulated and described in section 339.105, RSMo;

(2) Drawn on an escrow account of a title insurer or title insurance agency licensed to do business in Missouri;

(3) Drawn on an agency of the United States of America, the state of Missouri or any county or municipality of the state of Missouri; or

(4) Drawn on an account by a financial institution;

shall be exempt from the provisions of this section.

2. No title insurer, title insurance agency or title insurance agent, as defined in section 381.031, shall make any payment, disbursement or withdrawal in excess of ten thousand dollars from an escrow account which it maintains as a depository of funds received from the public for the settlement of real estate transactions unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees:

(1) At least ten days prior to such payment, disbursement or withdrawal;

(2) Which consisted of certified funds; or

(3) Consisted of a check made exempt from this section by the provisions of subsection 1 of this section.

3. If the director finds that a settlement agent, title insurer, title insurance agency or title insurance agent has violated any provisions of this section, the director may assess a fine of not more than two thousand dollars for each violation, plus the costs of the investigation. Each separate transaction where certified funds are required shall constitute a separate violation. In determining a fine, the director shall consider the extent to which the violation was a knowing and willful violation, the corrective action taken by

38 the settlement agent to ensure that the violation will not be
39 repeated, and the record of the settlement agent in complying with
40 the provisions of this section.]

[381.412. 1. A settlement agent who accepts funds of more
2 than ten thousand dollars for closing a sale of an interest in real
3 estate shall require a buyer, seller or lender who is not a financial
4 institution to convey such funds to the settlement agent as certified
5 funds. A check:

6 (1) Drawn on an escrow account of a licensed real estate
7 broker, as regulated and described in section 339.105, RSMo;

8 (2) Drawn on an escrow account of a title insurer or title
9 insurance agency licensed to do business in Missouri;

10 (3) Drawn on an agency of the United States of America,
11 the state of Missouri or any county or municipality of the state of
12 Missouri; or

13 (4) Drawn on an account by a financial institution;
14 shall be exempt from the provisions of this section.

15 2. No title insurer, title insurance agency or title insurance
16 agent, as defined in section 381.009, shall make any payment,
17 disbursement or withdrawal in excess of ten thousand dollars from
18 an escrow account which it maintains as a depository of funds
19 received from the public for the settlement of real estate
20 transactions unless a corresponding deposit of funds was made to
21 the escrow account for the benefit of the payee or payees:

22 (1) At least ten days prior to such payment, disbursement
23 or withdrawal;

24 (2) Which consisted of certified funds; or

25 (3) Consisted of a check made exempt from this section by
26 the provisions of subsection 1 of this section.

27 3. If the director finds that a settlement agent, title insurer,
28 title insurance agency or title insurance agent has violated any
29 provisions of this section, the director may assess a fine of not more
30 than two thousand dollars for each violation, plus the costs of the
31 investigation. Each separate transaction where certified funds are
32 required shall constitute a separate violation. In determining a
33 fine, the director shall consider the extent to which the violation
34 was a knowing and willful violation, the corrective action taken by

35 the settlement agent to ensure that the violation will not be
36 repeated, and the record of the settlement agent in complying with
37 the provisions of this section.]

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